AGREED RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1900.~~ 1901.

No. ~~138~~ 38.

CHRISTIAN SCHWARTZ ET AL., Petitioners,

vs.

JOHN S. DUSS ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

PETITION FOR CERTIORARI FILED JANUARY 17, 1901.
CERTIORARI AND RETURN MARCH 1, 1901.

(18,024.)

(18,024.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 231.

CHRISTIAN SCHWARTZ ET AL, Petitioners,

vs.

JOHN S. DUSS ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

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IN THE

UNITED STATES CIRCUIT COURT OF APPEALS.

THIRD CIRCUIT.

No. MARCH TERM, 1900.

CHRISTIAN SCHWARTZ, a citizen of the State of West Virginia; Antony Koterba, David Strohaker and Allen Shale, citizens of the State of Ohio, and G. L. Shale, a citizen of South Dakota,

vs.

JOHN S. DUSS, GOTTLIEB RIETHMUELLER, FRANZ GILLMAN, Conrad Hermansdoerfer, Edward Kellerman, Johanna Hermansdoerfer, Susie C. Duss, Karoline Molt, Katrina Nagel, Elizabeth Beck, Maria Diem, Barbara Boesch, Fredericka Muntz, Dorothea Hoehr, Regina Lautenschlager, Christiana Rall, Henry Hice and John Reeves, citizens of the State of Pennsylvania, and The Union Company, a corporation citizen of the State of Pennsylvania.

Among the rolls, records and judicial proceedings in the Circuit Court of the United States for the Western District of Pennsylvania, at No. 11 of November Term, 1894, may be found the following words and figures, to-wit:

DOCKET ENTRIES.

Bill filed June 27, 1894. Same day subpœna issued returnable to first Monday of August next. June 27, 1894, Service of subpœna accepted by C. S. Fetterman for all of the defendants.

1894, August 17th, Answer of Gottlieb Riethmueller, *et al* filed.

1894, August 17th, Answer of John S. Duss filed.

1894, August 17th, Answer of John Reeves filed.

1894, August 17th, Answer of the Union Company filed.

1894, August 17th, Answer of Henry Hice filed.

1894, September 1, Replication filed.

1894, October 15, Opinion of Court *sur* examiner's certificate with respect to the examination of the witness, John S. Duss, filed.

1895, February 28, Agreement of counsel filed, to request the Court to appoint W. W. Thompson, Esq., as examiner and master in the case.

And now, February 28th, 1895, at the request of all the parties in this suit, and in conformity with the foregoing agreement, the Court appoints W. W. Thompson, Esq., Examiner and Master in

this case with the authority specified in said agreement; the said Examiner and Master to act agreeably to the provisions of said agreement and subject to its terms:

1895, April 22nd, Order extending time for taking plaintiffs' testimony filed.

1895, December 21st, Petition of respondents for extension of time to take testimony and order thereon extending time to April 1st, 1896, filed.

1898, April 11th, Master's report and testimony filed.

1898, April 11th, Exceptions of complainants to Master's report filed.

1898, April 21st, Counsel for plaintiffs renew in court exceptions filed before the Master.

1898, December 5th, Death of Gottlieb Riethmueller, Conrad Hermansdoerfer, Edward Kellerman, Elizabeth Beck, Maria Diem, Dorothea Hoehr, and Regina Lautenschlager is suggested.

1898, December 5th, Argument of exceptions to Master's report begins.

1898, December 6th, Argument of exceptions to Master's report proceeds.

1898, December 7th, Argument of exceptions to Master's report concluded.

1899, February 13th, Opinion filed awarding a decree in favor of the defendants.

And now, this thirteenth day of February, 1899, upon consideration, it is ordered, adjudged and decreed that the plaintiffs' bill be and the same is hereby dismissed; and it is further ordered, adjudged and decreed that the plaintiffs pay the costs, including the Master's fee to be fixed *sec. reg.*, and which, together with his compensation as Examiner, shall be paid in the first instance by the defendants.

BY THE COURT.

1899, March 4th, the following order filed:

"PER CURIAM:

The compensation of W. W. Thompson, Esq., as Examiner and Master is fixed at the sum of three thousand dollars ($3,000).

M. W. ACHESON,
Circuit Judge."

Received Pittsburgh, March 15th, 1899, of John S. Duss, Trustee of the Harmony Society, the sum of three thousand ($3,000.00) dollars, the Master's fee fixed by the Court and which the said Trustee now advances under the terms of said decree.

W. W. THOMPSON.

1899, August 9th, Petition for appeal and assignments of error filed, appeal allowed.

1899, August 9th, Bond *sur* appeal in one thousand dollars approved and filed.

1899, August 9th, Citation awarded and issued.

1899, September 8th, Order filed extending time for filing record in the United States Circuit Court of Appeals to October 8th, 1899.

1899, October 9th, By order filed, the time for filing the record in this case in the United States Circuit Court of Appeals is enlarged to December 31st, 1899.

IN THE

CIRCUIT COURT OF THE UNITED STATES,

FOR THE

WESTERN DISTRICT OF PENNSYLVANIA.

SITTING IN EQUITY.

No. 11, NOVEMBER TERM, 1894.

CHRISTIAN SCHWARTZ, a citizen of the State of West Virginia; Anthony Koterba, David Strohaker and Allen Shale, citizens of the State of Ohio, and G. L. Shale, a citizen of South Dakota. Plaintiffs,

vs.

JOHN S. DUSS, GOTTLIEB REITHMUELLER, FRANZ GILLMAN, Conrad Hermansdoerfer, Edward Killerman, Johanna Hermansdoerfer, Susie C. Duss, Karolina Molt, Katrina Nagel, Elizabeth Beck, Marie Diem, Barbara Boesch, Fredericka Muntz, Dorothea Hoehr, Regina Lautenschlager, and Christina Rall, and Henry Hice and John Reeves, citizens of the State of Pennsylvania and residents of the Western District thereof; and The Union Company, a Corporation created by the laws of the State of Pennsyltrict thereof, Defendants.

To the Honorable, Judges of said Court:

Your orators complain and say:

1st. That during the years 1804 and 1805 one George Rapp and certain followers and associates of his, of the Kingdom of Wurtemburg, emigrated to the United States, and established an unincorporated religious society at Harmony, in the County of

Butler, State of Pennsylvania. That said society was called the "Harmony Society," and was organized upon the principle of community of goods and land ownership. The members of the said society, who had brought with them from Wurtemburg money, combined their funds and held all their property in common, they living as members of a common household, and each member enjoying alike with every other the fruits of their common labor, in equality and brotherhood. The occupation or business of said society was agriculture, except in so far as it was necessary to manufacture shoes, clothing and other necessaries for the community; and this so continued until the year 1807, or thereabouts. The members of said society obeyed said George Rapp as their spiritual and temporal leader and ruler. The only laws or rules governing said society were made by him, the members thereof having no voice in their enactment. All members thereof were upon an equality so far as this world's goods were concerned, and in all things their civil and social life was subservient to their religious life. The religious doctrine taught by said Rapp, and upon which the Society was founded, was that the second advent of Christ and the beginning of the Millennium was near at hand, and that, in order to be prepared for the same, the members of said society must separate themselves from the world and live in the manner hereinbefore stated. About the year 1807 the said community added to their doctrines and practices that of celibacy, as being necessary to the proper preparation of the coming of Christ, and thenceforth and until lately, as hereinafter stated, they lived as if single and unmarried, and abstained from marriage.

2nd. That about the year 1815 said society removed from Butler County, aforesaid, to Posey County, in the State of Indiana, where they remained until the year 1825, when they removed to Beaver County, in the State of Pennsylvania, and settled upon a tract of land purchased by said society at Economy, comprising some 3,000 acres, where they have ever since remained. That said George Rapp ruled over the said society continually from the year 1805 to the year 1847, when he died, and during all said period, from the year 1807 until lately, as hereinafter stated, the beliefs, doctrines and practices stated in the first paragraph were the rules of belief and action of said society.

3rd. Among the original members of said society were Christopher Schwartz, Joseph Koterba, Christina Strahecker, Maria Lorenze and Jacob Scheel (Shale), and John Bamesberger. Christopher Schwartz and Barbara, his wife, came from Germany in 1817, and when the society settled in Beaver County in 1825,

the said Schwartz, wife and six children went to Economy and were admitted to the society. Your orator, Christian Schwartz, was born in Pittsburgh in 1823, went into the society when three years old, and remained therein for a period of twenty years, during which time he labored jealously and faithfully in behalf of said society, when, forming an attachment for Dora Schneider, a niece of Mrs. Kriter, a member of the society, he left the society and was married, and of late years has resided at Charleston, in the State of West Virginia, and is a citizen of the said State of West Virginia. The father of said Christian Schwartz died in Economy on July 5th, 1858, his mother on February 11th, 1857, his sister Fredericka on January 11th, 1857, his sister Maria on May 26th, 1878, his sister Louisa on March 29th, 1889, his brother Joel, who was born in the society, died therein in 1858, and his brother Joseph died at Economy on June 25th, 1889. That the parents of said Christian Schwartz and his brothers and sisters, as aforesaid, remained continuously in said society from the date of their admission until their demise as aforesaid, and that each of said parents, brothers and sisters died intestate, leaving surviving them as their sole heir and legal representative the said Christina Schwartz. That the said decedents in addition to giving unto the said society large sums of money at the time of joining said society, contributed very largely in after years to the growth and prosperity of said society by a life of labor and devotion to its best interests; that your orator, the said Christian Schwartz, only left the society by reason of his contemplated marriage as aforesaid, and because the doctrine of celibacy prevented his remaining in the society after his said marriage. That all the members of his family are buried in the graveyard of said Harmony Society, adjoining the town of Economy. Joseph Koterba, the father of your orator, Antony Koterba, was one of the founders of the Harmony Society, having come from Germany in company with Father Rapp, and assisted in the organization of the society in Butler County in the year 1805. Two years later Andrew Koterba, the half brother of your orator, was born in this society and remained therein twenty-three years, until his death in 1880, dying intestate, and leaving as his heir your orator, the said Anthony Koterba, a citizen of the State of Ohio.

That in the year 1805, the paternal and maternal grandparents and the parents of your orator, David Strohaker, joined the Harmony Society, contributing thereto many thousand dollars. And the grandparents aforesaid remained members until their decease, and died intestate, and that the father of your orator continued a member until his marriage to Mary Rief, a member of said so-

ciety, and the mother of your orator, whose parents likewise were members of said society; that the parents of your orator were compelled to leave the Harmony society in order to contract said marriage, owing to the principle of celibacy then enforced; that Catharine Strohaker, the aunt of your orator, was likewise a member of the Harmony Society and died therein intestate, and that your orator, David Strohaker, is the heir of the parties aforesaid and is now a citizen of the State of Ohio.

That Maria Shale (Scheel), with her two sons, Jacob and Lawrence, came from Germany in the year 1804, and were among the first to join the Harmony Society, the said sons assisting in the building of the three towns of said society, and contributing largely by their labors to the founding and maintenance of said society; that the said last mentioned parties died intestate, leaving as their heirs, your orator, G. L. Shale, the son of Lawrence Shale, and nephew of Jacob as aforesaid, a citizen of the State of South Dakota, and your orator, Allen Shale, the grandson of Lawrence Shale or (Scheel) aforesaid, a citizen of the State of Ohio.

That all of the above named defendants, natural persons, are citizens of the State of Pennsylvania, and residents of the Western District thereof, and the said corporation is a corporation created by the laws of the State of Pennsylvania and a citizen and resident of the Western District thereof. And that the above named defendants, natural persons, except the said Hice and Reeves, were formerly members of the Harmony Society, and are the last members of said Harmony Society, which has become dissolved as hereinafter stated, and are with your orator entitled to the distribution of the remaining assets of said society excepting the said Duss, who never legally became a member of said society.

4th. That after the death of said George Rapp, in the year of 1847, a plan for the regulation and government of said society was adopted by the members thereof, by which the management of the internal affairs thereof was committed to a "Board of Elders," to be composed of nine members of said society, while the external business affairs were to be managed and transacted by a "Board of Trustees," to be composed of two members, who should be selected by said Board of Elders from the members thereof. The first Board of Elders consisted of John Schnabel, Adam Nachtribe, John Eberly, Mathias Scholle, Joseph Hoerhla, Johnathan Lenz, Romulus Baker, Jacob Henrici and J. Stahl. Romulus L. Baker and Jacob Henrici were chosen the first Board of Trustees, and they and their successors have continued the management of the affairs of said society until lately. The present

Board of Elders consists of John S. Duss, Susie C., his wife, Gottlieb Reithmueller, Conrad Hermansdoerfer, Regina Lautenschlager, Frank Gillman, Maria Diem, Fredericka Muntz and Karoline Molt.

5th. At the death of Romulus L. Baker, which occurred in 1868, Jacob Henrici and Johnathan Lenz became the Board of Trustees, and they continued to act as such until the death of said Johnathan Lenz, which occurred in 1890, when Jacob Henrici and Ernest Woelful became the Board of Trustees, and acted as such until the death of said Ernest Woelful, which occurred in the same year. Jacob Henrici and said John S. Duss were then made trustees and acted as such until the death of Jacob Henrici, on the 25th day of December, 1892, when said Samuel Sieber was made a trustee, and on the retirement of whom from the society, at the instance of said Duss, referred to hereafter, Gottlieb Riethmueller, a relative of said Duss, was elected trustee, and the said Duss and Riethmueller are at the present time holding the position of trustees in said society.

6th. That the money and real estate from those who became members of the society by said George Rapp and his successors were received and accepted by them in trust and for the furtherance of the tenets and beliefs upon which the society was founded, and the assets of said society by profits, interest and accretions became of great value.

7th. That at the death of said Lenz and for some time thereafter that said society was solvent, said possessions or trust property amounted in value upwards of $4,000,000. That all of said possessions up to and until the grievances hereafter complained of, were scrupulously used for the benefit of all its members and for the advancement, benefit and continuation of the society.

8th. That the Harmony Society from the period of its inception until a recent date, adhered rigidly to its plan of government and became illustrious and highly respected by reason of its sincere advocacy of the equality of man, its espousal of the highest principles of Christianity, and its honesty and benovelent administration of all public functions, whether in the management of its internal affairs or in its many transactions with the citizens of Western Pennsylvania.

9th. That until the acts hereinafter complained of, the said society, notwithstanding the simplicity of its organization, its abhorrence of purely worldly aims and its consequent lack of business experience, has but once in a period of ninety years suffered from serious internal discord, and that was on the occasion of the visit and later the induction into the society of one Count De

Leon in the year 1831, who, by artifice and by a pre-acquired knowledge of the peculiar religious beliefs of its members, was enabled to represent himself as the Divine Messenger, and that his presence and that of his followers was the fulfillment of the Second Advent, an expectation at the period that was shared by many of the pietistic sects of Germany and Harmony Society in particular. The discord created by this pretended Messiah and his followers in their persistent efforts to obtain control of the society and its wealth, finally led to their retirement, accompanied by one-third of the members of the society, so credulous were these honest and simple-minded Harmonists in the claims of this adventurer. Sixty years have now elapsed and again a plot very similar in general details, and exactly similar in purposes has finally brought the society wholly within the control of a mere adventurer, so that as an organization is has wholly ceased to exist.

10th. That during the year 1890, after a long period of prosperity and complete harmony in said society, began a second conspiracy, as last aforesaid, the results of which have overturned and destroyed the entire government of the society, wasted nearly its entire wealth, depleted its membership to a few aged and infirm women and placed the management of the society and the control of its remaining assets in the hands of one man and certain associates and confederates, within and without the ranks of the society, as hereinafter more fully set forth. That on July 29th, 1889, one John S. Duss, and wife, both formerly employees and servants of the society, arrived at the town of Economy after an absence of some six years precarious life in the West, both of whom were penniless, without visible means of support, and neither in any way related to any member of the Harmony Society, or contributed in any manner to the funds or assets of the society, but on the contrary, the said Duss has been a mendicant or servant according to his absence or presence in the society since his extreme youth.

11th. That the said Duss, shortly after his arrival at Economy, as last aforesaid, sought and obtained employment as school teacher and thereupon began, with the assistance of certain confederates, his efforts to obtain admission into the society. Upon the death of Miss Gertrude Rapp, granddaughter of the founder, and housekeeper of Father Henrici, Senior Trustee, the said Duss, by intrigue, very opportunely had his mother, a former servant of the society, take the place made vacant by the death of Miss Rapp, thereby gaining ascendancy over the will of the aged and decrepit Senior Trustee. One week later George Kirschbaum, a member of the Board of Elders and the confidential friend of

Jonathan Lenz, Junior Trustee, was suddenly killed in a natural gas explosion; a few days later John Wirth, another member of the Board of Elders, died suddenly; two weeks later Jonathan Lenz, a member of the Board of Elders and Junior Trustee, died suddenly, and that thereupon the remaining members of the Board of Elders, now thoroughly demoralized and wholly under the dominion of said Duss, proceeded on January 24th, 1890, to fill the vacancies on said board by secretly choosing as successors to said Kirschbaum, Wirth and Lenz, the said Duss and two confederates, named Jacob Nicklaus and Herman Fischern, none of whom had ever been members of the society and became such, if at all, by their election to the Board of Elders of the Harmony Society; that the said election was wholly contrary to the usages of said society, without the assent of a single member thereof except such as were upon said board, and was objected to by nearly every influential member of the society, who were, however, powerless to prevent this unexpected and flagrant violation of the society's practices; a few days later the new board elected Mrs. Duss a member of the society. Six months later Ernest Woelful, aged about forty years, the successor to Lenz as Junior Trustee, died suddenly and unexpectedly, and the Board of Elders, of which said Duss was a member, elected thereupon said Duss as Junior Trustee, so that within the period of six months, the said Duss became a member of the society, a member of the Board of Elders and Junior Trustee.

Shortly after this the said Duss and wife took up their abode with Jacob Henrici, the senior trustee, and continued to remain therewith until the latter's death, as hereinafter mentioned.

12th. That prior to the coming of said Duss to Economy he was friend and confederate of Dr. Cyrus Teed, the notorious libertine and adventurer, now located in Chicago, and presiding over an institution filled with depraved and deluded women whom he calls his "angels" and to whom he represents himself as the "Messiah." From the entrance of said Duss into the Harmony Society it had been his design to admit the said Teed and his entire collection of notorious men and women, into the Harmony Society, thereby converting this old and religious celibate society into one closely allied with the free-love doctrines of the Oneida and Mormon communities, and at the same time by said admission obtain for himself and said Teed the entire control and management of the Harmony Society and its large possessions. To assist in said purpose the said Duss, after taking up his residence with Father Henrici, secretly sent large sums of money belonging

to the Harmony Society to said Teed, and from time to time clandestinely admitted into the town of Economy certain intimate friends of said Teed, among them one Turner Silverfield and a notorious female passing under the assumed name of Miss Emertz, the latter one of Teed's so-called "angels." Miss Emertz, by arrangement with said Duss, was given the opportunity of addressing the members of the Harmony Society in their church, in which address she heralded the coming of the new Messiah Teed, extolled his disciples, and declared he would soon be in their midst.

After an hour's discourse by this depraved woman, Duss addressed the members, saying that Teed was the true Messiah, and that his doctrines were true. Later the said Duss, by reason of his residing within the house occupied by said Henrici, Senior Trustee, and his predecessors, including the founder of the society, George Rapp, was enabled to appropriate certain valuable and sacred vestments worn at one time by Father Rapp, which were duly sent to said Teed to assist in the success of his pretended divinity. Having the limited government of the society well within his control, and believing the opportune moment had arrived, the said Duss caused to be erected a large and expensive residence on the outskirts of the town of Economy, and had the same expensively and luxuriously furnished and adorned, exceeding in size, style and appointment any building in the community, and the edifice was built, as your orators allege and expect to be able to prove, for the express accommodation of the Kovesh Society, presided over by said Teed. At this juncture many of the active and more intelligent of the Harmony Society broke into open rebellion against the sinister and immoral design of their so-called trustee, and as a result thereof Henry Feucht, one of the most active protestants against this proposed desecration, was arbitrarily expelled from the society by the Board of Elders at Duss' instance, and while reluctantly restored on threats of legal redress and disclosures later attending the litigation aroused by the final withdrawal of the Feucht family from the society, after receiving $70,000 in money and real estate as an inducement to leave, the plot to admit said Teed and his female followers was, for the time being, abandoned, and an entirely new and equally destructive plot was then arranged by said Duss, with the assistance of other confederates not allied with said Teed, and the same has now been almost consummated, as hereinafter more fully set forth.

13th. That the said Duss, at the time he joined the society, in the year 1890, was about thirty years of age, and was by far its youngest member. The society then consisted of two classes

of members, about equal in number, one composed of old and infirm persons, mostly female, who, from the decrepitude of age, their long residence in the society, and a blind faith in the absolute integrity of their former rulers, were ever at the mercy of the Senior Trustee, were he a person actuated by other motives than a father towards his family; the other class made up of comparatively young persons, mostly men, possessing considerable knowledge of the world, and who, like Duss, had joined the Society from time to time, as the needs of the society required the admission of new and more active members to take the place of those who died or were unable in their declining years to assist in the management and the agricultural pursuits of their community.

14th. Upon the failure of the plot to turn the society over to the said Teed, the said Duss concluded to wreck and dismember the Harmony Society, and thereby attain for himself and confederates what he had lost by not colonizing said society as aforesaid. To this end, having the entire control of the Board of Elders, he directed that no new members be elected to the society under any circumstances whatsoever, and as a result thereof the said Duss and Susie C., his wife, are the last members admitted to the society in the last four years. And later the said Duss arranged for the removal of all said members of said society to the end that he, the said Duss and his confederates, might acquire the entire assets of the said society, as will more fully appear hereafter.

15th. That the said Duss, after his election as Senior Trustee, for the purpose of carrying into effect his plan to obtain possession of the society's assets, entered into certain arrangements with one Henry Hice and one John Reeves, of the town of Beaver, Beaver County, Pennsylvania, whereby the said Duss agreed to use the money of the Harmony Society to pay off the alleged indebtedness of the Economy Savings Bank, of which said Hice and Reeves were the principal officers, and for this purpose the said Duss, without the knowledge or consent of the members of said society, used over $1,000,000 of the society's money. That the said bank was then wholly insolvent by reason of the overdrafts made and honored by said Hice and Reeves, officers and stockholders in said bank, and officers and stockholders in the Beaver Falls Cutlery Works and File Works, the debtors of said bank. That the losses incurred by said society by reason of the mismanagement of the said bank, cutlery works and file works by said Hice and said Reeves amounted to over $2,000,000, all of which the said Duss knew at the time of his fraudulent and unauthorized

use of the society's funds as aforesaid, and that since the said unlawful division of said money, the said Duss has not proceeded against either the said Hice or said Reeves to recover back the money then and now lawfully due said society, and by said Hice and Reeves, but on the contrary, has aided and abetted the same in obtaining further assets of said society, as will more fully appear hereafter.

16th. That on the 21st day of December, 1892, the said Duss and certain confederates, conspiring together to defraud your orators and the members of the said society generally and to provide means for the payment of the indebtedness of the said Economy Savings Bank, caused to be executed by the said Duss as trustee, and by his co-trustee, Jacob Henrici, a certain mortgage, bearing the date and year last aforesaid, and recorded in the Register's Office of Allegheny County, in Mortgage Book, vol. 639, page 94, for the sum of $400,000, bearing 6 per cent. interest, upon the lands of the said society in Beaver and Allegheny Counties, including the entire town of Economy, its church, the graveyard of the society, wherein are interred Father Rapp and four hundred deceased members of the society, including the parents or other ancestors and relatives of your orators as aforesaid.

The said mortgage includes the home of the said society, and the residences of the aged and infirm members thereof, and was made without any authority from the said society or your orators, and the execution of the same by the said Henrici was in *articulo mortis*, and wholly beyond any power of comprehension of his act, and the said mortgage was not the act of the said society or of the said Henrici, and was for the purpose of paying off claims upon which the society was only partly liable, if at all, and in relief of said Hice and Reeves, for which they were primarily responsible.

And said mortgage is an apparent lien upon the interest of your orators in the said described lands. And your orators charge it is the purpose of the said Duss, Hice and Reeves and certain other confederates by means of a foreclosure of said mortgage to obtain possession of all such lands and exclude therefrom your orators and other parties holding interest therein as members of said society or heirs of deceased members.

Your orators therefore demand that the said defendants make a full and perfect disclosure as to the date and amount of mortgage, the names of the parties mortgagee, the uses to which the proceeds thereof had been put, and should it appear that large sums have been applied to the payment of the liabilities of said

bank, who were concerned as partners and officers in said bank and what steps, if any, have been taken to compel such persons to pay their shares of said liability. And your orators crave and reserve the right hereafter on the coming in of the answer to add such as defendants to this bill, if they shall be so advised, and also to make the persons named as mortgagees in said mortgages parties defendant hereto, should your orators be advised that they are necessary or proper parties and in order that the validity of said mortgage may be inquired into.

17th. That on the day of June, A. D. 1893, the said Duss, for the purpose of raising another large fund wherewith to secretly secure and induce removal of those members most likely to inquire into the validity or propriety of his conduct as trustee, as more fully set forth in paragraph 18th of the present bill, caused to be executed a second mortgage, bearing the day and year last aforesaid and recorded in the office of the Recorder of Allegheny County in Mortgage Book, vol. 677, page 1, for the sum of $100,000, bearing 6 per cent. interest, upon the lands described in the former mortgage. That said last mentioned mortgage was made without any authority from said society or your orators, and the execution and delivery of the same by said Duss was without the assent of the members of said society, most of whom at the present time are in ignorance of the same. And your orators request that the answer when filed shall state specifically the purpose of said mortgage and to whom the proceeds thereof were paid, again reserving the right to make other parties defendants hereto on the filing of said answer.

18th. Your orators further show, that immediately prior to the assumption of said John S. Duss of the office of trustee, and thereafter until lately, the said society was possessed of valuable dividend-paying stocks in prosperous bridge companies, railroad companies, water companies and other prosperous corporations in the State of Pennsylvania, to the amount of nearly two millions of dollars, and that the said Duss lately sold, assigned and disposed of all, or substantially all of said stocks. And your orators further charge and believe that by means of the sale of such stocks and the lands of the society, the said Duss is attempting to raise funds to carry out his purpose hereinbefore set forth, and to divert the assets of said Harmony Society from the use of your orators and its members, and to appropriate the same to the advantage and enrichment of him, the said Duss, and his confederates. And your orators request a full disclosure as to said sales, the purchasers therein, the amount of consideration and how the proceeds thereof were used or applied.

19th. As the next scheme to wreck the society, the said Duss, by artifice, misrepresentation, coercion and fraud, induced or forced nearly all of the active and more intelligent members of the society to leave and withdraw from said society, as hereinafter more fully set forth, so that the few remaining members by reason of age and other infirmities, are wholly ignorant of their peril and unaware of the fraudulent acts and future plans of said Duss. That the said Duss has secretly and fraudulently appropriated several hundred thousand dollars, realized partly from the sale of stocks upon which the said society was dependent for an income, and partly from a certain fraudulent mortgage placed upon the town of Economy, which said money the said Duss has fraudulently and secretly from time to time used in getting rid of those members of the society most likely to prove dangerous to the consummation of his scheme as aforesaid. That within the past year the said Duss induced Samuel Sieber, the Junior Trustee, to leave the society upon the payment of a large sum of money fraudulently and secretly appropriated as aforesaid, and has elected in his place one Riethmueller, a relative and friend of said Duss; that later the said Duss, without the authority or knowledge of said society, induced Hugo Miller, one of the leading members of the Board of Elders and a most useful member of the society in the management of its internal affairs, to leave the society, paying a sum of money approximating $10,000. In a like manner the said Duss induced Jacob Nicklaus, another member of the Board of Elders to leave the society, paying him also a large sum of money; a few weeks later the said Duss induced Blaszius Platz, another member of the Board of Elders, to leave the society, paying him also a large sum of money; a month later the said Duss induced Moritz J. Fredericks, another leading member of the Board of Elders, to leave the society, paying him likewise a large sum of money. That after the fraudulent and secret removal of said Sieber, Miller, Nicklaus, Platz and Fredericks from the Board of Elders, as aforesaid, the said Duss, without the assent of the members of the society, personally selected as their successors upon said board four women, to-wit: Susie C. Duss, wife of said Duss; Maria Diem, aged eighty years, unable to speak English, infirm and without any business capacity whatever; Fredericka Muntz, aged seventy-five years, unable to speak English, and unable to understand the slightest business affairs; Regina Lautenschlager, aged seventy-four, unable to speak English, ignorant and infirm; Karoline Molt, aged fifty years, unable to speak English, ignorant and without any business experience.

That never before in the history of the society were women eligible to serve on said board, and that the same is now composed of a majority of women, all of whom, with the exception of Susie C., wife of said Duss, are old and infirm and unable to act in the management of said society or to comprehend its situation, so the said board has but a nominal existence and is not permitted by said Duss to take any part in the management of the affairs of the said society and is not consulted by him except possibly his said wife, and the said Duss and his confederates hereinafter mentioned have usurped and now have the entire control and management of the affairs of said society and are now controlling and managing all of the real and personal property of the said society in their own interest, as hereinafter more fully set forth. That in addition to the removal of the members of the council as aforesaid, the said Duss fraudulently and secretly induced, by representation, coercion, and the payment of large sums of money, the following members to leave the society within the past two years: Julius Stickel, Paulie Stickel, Sigmund Stievater, Christina Hoerer, Elizabeth Sieber, Benjamin Feucht, Rebecca Feucht, Henry Feucht, Margaret Feucht and Tirza Feucht, so that the said society, excluding the Board of Elders as aforesaid, is now reduced to a membership of only eight persons, none of whom are aware of the actions of said Duss, or are consulted by him in the present control and management of the property of said society.

20th. That on the 12th day of April, 1894, the said Duss, without any authority from the members of the Harmony Society, and in the utmost disregard to his trust, secretly entered into an arrangement with said Hice, Reeves, and one James Dickson, whereby he, the said Duss, agreed to convey the town of Economy, the surrounding properties and certa ' other lands of the Harmony Society, situate in Allegheny C nty, to the Union Company, an alleged corporation created under the laws of the State of Pennsylvania. And your orators allege that a conveyance has been made by said Duss for the lands as aforesaid, and that the same was made without the knowledge of your orators or any members of the said society, excepting possibly Susie C., wife of said Duss, and Gottlieb Riethmueller. That by the said pretended conveyance and sale of the home of the Harmony Society and its other properties, the said Duss has attempted to wholly terminate the existence of said society, not only as to the government thereof by the Board of Elders and by the members, but also as to the ownership of any property. That the said Union

Company, in addition to said Duss and Riethmueller, is composed of said Hice and Reeves, debtors of the said Harmony Society, as hereinbefore stated, and one James Dickson, the private bookkeeper and confidential agent of said Duss, whose interest in said corporation was acquired by gift from said Duss.

That your orators are advised that it was not competent for the said trustees to convey said properties to the said Union Company, but such transfer was a breach of trust and wholly invalid. Your orators, therefore, demand a full answer and disclosure as to said pretended sale and transfer, to whom the several shares therein have been issued, and on what consideration.

21st. That for the purpose of winding up and dissolving said society, the said Duss being unable to obtain the consent of the remaining members to withdraw from the said society, upon receipt of their shares of the said assets, is now endeavoring to compel said remaining members to depart by means of intimidation and oppression. Having abolished the pursuit of agriculture, and having dispossessed the society of all means of income from outside sources by the fraudulent sale of its interest-bearing securities, and having mortgaged the town of Economy, and later conveyed away the said properties as aforesaid, the said Duss is only prevented from acquiring the apparent title to the vast resources of the said Harmony Society by reason of the membership of half a dozen old, infirm women, as aforesaid. As an instance of such cruel and oppressive conduct as aforesaid, your orators allege, among other things, that on June 28th, 1894, the said Duss caused Elizabeth Beck, aged eighty years, and one of the oldest and most respected members of the society, to be taken out of her residence on false representations, and, against her strong protests, had her incarcerated in an abandoned shed, once occupied as a saddler's shop and later as a chicken coop, where she is still confined, deprived of every comfort essential to a woman of her advanced years, and due her by reason of a life spent in the service of the society. That the said Elizabeth Beck has been deprived of her nurse, and is now in the alleged custody of one Fredericka Muntz, a woman of ungovernable temper and cruel disposition; that the said shed wherein she is confined has but one room, and is utterly unfitted for human habitation, and unless the said Elizabeth Beck be restored to her former home, and placed in the care of a competent and faithful nurse, she will soon die from exhaustion and terror, or become a helpless lunatic. That the said Duss has been guilty of many other such acts of oppression, which your orators reserve the right to offer proof thereon upon the trial of this cause.

22d. That the said Duss has been and now is engaged in the business of selling intoxicating liquors as the property of the Harmony Society, without any license whatsoever, either from the government of the United States or from the courts of the State of Pennsylvania.

23rd. That the principle of equality which has hitherto been regarded as one of the objects of said society is no longer recognized or maintained; that the said John S. Duss and his family enjoy every luxury which they may desire, expending therefor thousands of dollars annually, while the aged and infirm members, who, by a life of frugality and continuous labor acquired this estate, are now obliged to be content with the bare necessities of life, and these awarded to them with grudging and stinting hands.

24th. That the said John S. Duss, in addition to the many breaches of trust and in the maladministration of his duties as aforesaid, is a man of bad moral character, and is as such utterly unfitted to act as the Scriptural advisor and head of a religious society; that the said Duss, in addition to holding so-called religious views utterly at variance with the creed of said society, has been guilty of gravest duplicity with his cousin, Fredericka R. Kroll, a young girl of some eighteen years of age, formerly a member of his household, in secretly taking her to the Teed residence in Chicago, where she is continually surrounded by the depraved and wanton women who compose the majority of Teed's so-called "Angels." On the filing of said answer your orators particularly demand the said Duss to account for the money sent said Cyrus Teed and Fredericka R. Kroll within the past two years.

25th. That recently said Harmony Society has become dissolved as aforesaid, that all of its purposes and practices established as aforesaid by the founder of said society, and by the ancestors of your orators, have been abandoned, that the pursuit of agriculture no longer exists in said society; that its chief assets, consisting of bonds, stocks and other securities, and the town of Economy, with its buildings and the adjacent lands of said society, consisting of some 3,000 acres, and which constituted the basis of organization and business of said society, have been sold and conveyed away by the said Duss as aforesaid in fraud, however, of the rights of your orators and their co-tenants, and that by reason of the facts hereinbefore set forth, your orators and the said last members, except the said Duss and wife, are now tenants in common of all of said lands and tenements, and entitled to partition thereof, in proportion to their respective interests.

26th. That for some time past the members of said Harmony Society have been retiring therefrom and have received the amount of their interest in said association in the land or money, or both, the land being set apart in severalty to them, and have released all of their rights and interests in said association in consideration for such payment or conveyance to them, and that by said retirement and withdrawal the membership of said association has been reduced to the persons hereinbefore named members, that by common consent this association has ceased to exist as an association, and that if the property thereof has ever been impressed with a trust (which your orators deny, as being contrary to public policy and void in law or equity), such trust has wholly ceased and the assets of such dissolved association have reverted to the donors thereof among whom were the ancestors and intestates of your orators as hereinbefore fully set forth.

Your orators therefore need equitable relief as follows:

FIRST. That a receiver may be appointed by your Honorable Court, to take charge of the property and assets, real and personal, which were of this said society, including the land fraudulently conveyed away as aforesaid to the said Union Company, until the final decree in this cause.

SECOND. That now, by a preliminary injunction, and hereafter by a perpetual injunction, under the seal of your Honorable Court, the said Duss may be restrained and enjoined from encumbering, selling, assigning or in any way intermeddling with any of the property and assets which were of said Harmony Society, and from creating any debt, obligation or liability of said society, and from in any way interfering with its affairs.

THIRD. That your Honors will decree that said Duss shall make full discovery of the accounts, liabilities, debts, assets which were of said Harmony Society, and that said Duss may in a like manner account for his management thereof since he became a Trustee of said society.

FOURTH. That the Union Company and the said Duss, Riethmueller, Hice, Reeves and Dickson, its members, agents and officers be restrained and enjoined by preliminary injunction, to be perpetual on final hearing, from in any manner granting, conveying, charging or encumbering the said land or any part thereof, so as aforesaid conveyed by said Duss and Riethmueller.

FIFTH. That the said deed and conveyance made by the said Duss and Riethmueller to the said Union Company be decreed fraudulent and void, and without effect as against your orators, and that the Union Company and its said members, agents and

officers be ordered and decreed to surrender the said deed of conveyance to the Clerk of your Honorable Court for cancellation by him.

SIXTH. That an account may be stated by your Honorable Court against the said Duss of the losses which the said society has sustained through his fraud and mismanagement, and that he be decreed to pay over to the receiver so appointed by your Honorable Court for the use of your orators and the other parties entitled, the balances so ascertained against him.

SEVENTH. That your Honors will order a decree, a marshalling of the assets which were of the Harmony Society and a winding up of its affairs, and a division and distribution of its assets, real and personal, either by means of a sale under order of your Honorable Court, or in such other manner as your Honors may deem most expedient, to and amongst the parties legally and equitably entitled thereto, including your orators, and that your orators may receive their just share and proportion of said assets, real and personal, in severalty.

EIGHTH. That your Honors will grant unto your orators such other and further relief as to your Honors may seem meet, and as the exigencies of the case may require.

NINTH. And may it please your Honors to grant unto your orators a writ subpœna, under the seal of your Honorable Court, commanding the defendants to appear upon a certain day in your Honorable Court and answer the bill of complaint, and an answer under oath is hereby waived, and stand and abide what your Honorable Court shall decree in the premises; and your orators will ever pray, etc.

SHIRAS & DICKEY.
Counsel for Plaintiffs.

Commonwealth of Pennsylvania,
County of Allegheny. } *ss.*

Personally before me, the undersigned authority, came Anthony Koterba, one of the above-named complainants, who, being duly sworn according to law, deposes and says that he has read the foregoing bill of complaint, and that the statements thereof, so far as the same are made of his own knowledge, are true; and so far as the same are made upon information and belief, he believes them to be true.

Sworn and subscribed this 23d day of June, A. D. 1894. } ANTONY KOTERBA.

ROBERT T. MCELROY,
Notary Public.

IN THE

CIRCUIT COURT OF THE UNITED STATES,

FOR THE

WESTERN DISTRICT OF PENNSYLVANIA.

SITTING IN EQUITY.

No. 11, NOVEMBER TERM, 1894.

CHRISTIAN SCHWARTZ, a citizen of the State of West Virginia; Antony Koterba, David Strohaker and Allen Shale, citizens of the State of Ohio, and G. L. Shale, a citizen of South Dakota,

vs.

JOHN S. DUSS, GOTTLIEB RIETHMUELLER, FRANZ GILLMAN, Conrad Hermansdoerfer, Edward Killerman, Johanna Hermansdoerfer, Susie C. Duss, Karoline Molt, Katrina Nagel, Elizabeth Beck, Marie Diem, Barbara Boesch, Fredericka Muntz, Dorothea Hoehr, Regina Lautenschlager, and Christina Rall, and Henry Hice and John Reeves, citizens of the State of Pennsylvania and residents of the Western District thereof; and The Union Company, a Corporation created by the laws of the State of Pennsylvania, and a citizen thereof, and a resident of the Western District thereof.

To the Honorable, the Judges of said Court:

The answer of Gottlieb Riethmueller, Frank Gillman, Conrad Hermansdoerfer, Edward Killerman, Johanna Hermansdoerfer, Susie C. Duss, Carolina Molt, Katrina Nagel, Elizabeth Beck, Maria Diem, Barbara Boesch, Fredericka Muntz, Dorothea Hoehr, Regina Lautenschlager and Christina Rall, defendants to the bill of complainants, respectfully show:

1st. In the year 1803 George Rapp and his son John, and several of their friends, left the Kingdom of Wurtemberg, came to the United States, and located at a place called Harmony, in Butler County, Pennsylvania, where they were joined by a considerable number of other emigrants. They remained there until the year 1814, when they removed to Posey County Indiana, where they remained until the year 1825, when, becoming dissatisfied, they moved back to Pennsylvania, and located at Economy, in Beaver County, Pennsylvania, where they ever since have resided. They formed a society or an association called "The Harmony Society," and in 1805 they made the first written contract be-

tween them. This was followed by other written contracts, dated respectively 1821, 1827, 1836, 1847, 1890 and 1892. All of these contracts are in writing, and were executed by all members of the society at the time they were respectfully dated, except that the agreement of 1892 was not signed by Henry Feucht and Margaret, his wife, and Benjamin Feucht and Rebecca, his wife, who have since withdrawn from the society. True copies of said several agreements and writings, marked "A, B, C, D, E, F and G" respectively, are hereto annexed and made part of this answer.

Community of goods was not a principle of the early colonists, but each one held his own in severalty. In 1805 the doctrine of community of goods was adopted, and it then became, and ever since has remained, the one indispensable thing to membership in the society. No one could belong to the society without adopting the principle of community of goods, and this has ever since been and is the main, striking feature of the Harmony Society.

No particular form of religious belief was ever necessary to membership in the society, and though George Rapp and subsequent spiritual leaders have preached the second advent of Christ, and have also preached the nearness of the millenium, yet a belief in either of these doctrines was not necessary to membership in the society. In the written contract of 1827, the society specially declared that it had been founded by George Rapp and others:

"Upon the basis of Christian fellowship derived from the sacred Scriptures, including the government of the patriarchal age, united to the community of property adopted in the day of the apostles, and wherein the single object sought is to approximate, so far as human imperfections may allow, to the fulfillment of the will of God by the exercise of those affections and the practice of those virtues which are essential to the happiness of man in time and throughout eternity."

From 1805, at Harmony, in Butler County, Pennsylvania, in Indiana, and at Economy, in Beaver County, the Harmony Society, through its agents or trustees, has carried on mercantile pursuits and manufacturing business of different kinds, as well as agricultural pursuits.

In 1807, different members of the society advocated the efficacy of celibacy, and since then this doctrine has been followed and practiced by a great number, if not all, of the members of the Harmony Society.

It is true that the members of the Harmony Society have, since 1805, always had all things in common, and that each received from the society that which was necessary to his or her maintenance, and support, and education, and each in turn was

bound to render unto the society obedience and labor. There was, and always has been, equality between the members of the society, save the necessary difference resulting from the election to the governing bodies in the society itself; and each of the members of the society agreed to submit himself to the government provided by the society for its and their control.

Except herein expressly admitted, the averments of the first paragraph are denied.

2nd. We admit that in 1815 the Harmony Society moved from Butler County, Pa., to Posey County, Indiana, and in 1825, removed from Posey County to Economy, in Beaver County, where is has ever since remained.

George Rapp, in the different positions he occupied, ruled over the society from 1805 until 1847, but during that time other members also occupied positions of trust and power in the society.

All the other allegations in the second paragraph of the bill are denied.

3rd. It does not appear by the records of this society that Maria Lorenz, Christian Schwartz, one of the plaintiffs, Dora Schneider, Mrs. Kriter, Joel Schwartz, Mary Rief, Maria Shale (Scheel) and her son, Lawrence Shale, ever became members of said Harmony Society, nor did the ancestors of said Christian Schwartz, or of the other plaintiffs contribute cash or other property of any consequence to the common property of said society. We deny that the said Harmony Society has become dissolved; that said plaintiffs are in any way entitled to intermeddle with, or participate in any wise in the enjoyment or in the division and distribution of the property of the said society by reason of heirship or in any other manner whatsoever. And defendants aver that John S. Duss was legally elected a member of said society.

4th. The averment in the 4th paragraph of the bills are admitted. The plan for regulation and government of the Harmony Society, which is therein referred to, was a written contract duly executed in 1847, marked Exhibit "E," by all the then members of the Harmony Society.

5th. The averments of the 15th paragraph of the bill are admitted with the explanation that John S. Duss was elected as a trustee on July 28th, 1890, and Samuel Sieber was elected as a trustee on the 27th day of December, 1892, and who voluntarily withdrew from said society on the day of July 6th, 1893; and on the 6th of July, 1893, Gottlieb Riethmueller was elected as trustee in his stead, and not at the instance and request of John S. Duss, as alleged.

6th. The averments of the 6th paragraph of the bill are de-

nied as therein stated. It is, however, admitted that the agents and trustees of the Harmony Society, in whose names, from time to time, all the goods and properties of the society have been placed or held, were then, and ever since have been and are now, held in trust for the Harmony Society, but always subject to the terms of the written contracts between the members of the said society. Among these terms it was expressly provided that each member of the society did release all his right, title, interest and claim in law and equity to any and all the property of the society in whatsoever name it might be held. No one member of the society could or can, in any way under these written contracts claim any portion of the common fund or property, but all the members expressly covenanted with each other that the said common funds and property of the society should be and remain joint and indivisible stock.

7th. That at the death of Johnathan Lenz, we believe it to be doubtful whether said society was solvent or not, and deny that the possessions or trust property thereof amounted to four million ($4,000,000) dollars; and we aver that all the possessions of said society were and have been to this present time held for the use or the benefit of all its members, and for the advancement, continuation and the best interests of the society.

8th. The averments in the 8th paragraph of said bill are admitted to be correct, with the exception, that up to this present time it has never departed or deviated from its original plan of government, except as changed or modified in the several agreements hereinbefore referred to.

9th. We admit that about 1832, a number of the members of the Harmony Society severed their connection with said society, and with one Count De Leon settled at Phillipsburg, Beaver County, Pennsylvania, and except as herein expressly admitted, the averments of the 9th paragraph are denied.

10th. After considerable correspondence with, and at the special instance and request of Messrs. Henrici and Lenz, the trustees of the society at that time, John S. Duss and wife, who were residing on a farm or ranch in Nebraska, sold their property there and came to Economy in July, 1888, he, Duss, being employed by the trustees as a teacher in the school of the society. All other averments of said paragraph, not here expressly admitted, are denied.

11th. We admit that after the death of Miss Gertrude Rapp, who had been acting as housekeeper for Jacob Henrici, the Senior Trustee, Mrs. Duss, the mother of John S. Duss, who had been a member of the society for a number of years, at the instance and

solicitation of the trustees, with the full knowledge thereof by the Board of Elders and the members of the society, was elected as housekeeper to fill the vacancy occasioned by the death of Miss Rapp.

That after the death of George Kirschbaum, John Wirth and Johnathan Lenz, on or about January 24th, 1890, John S. Duss, Jacob Nicklaus, and Herman Fischern, then members of said society, were duly and legally elected members of the Board of Elders, to fill the vacancies occasioned by the death of the aforesaid Kirschbaum, Wirth and Lenz. That Mrs. Susie C. Duss, with eighteen others, was elected a member of the society about three weeks thereafter; and that after the death of Ernest Woelfel, the Junior Trustee, John S. Duss was duly and legally elected trustee to fill the vacancy occasioned by the death of said Woelfel; and some time after the election of Mr. Duss as trustee, at the request of Mr. Henrici and in accordance with a resolution by the Board of Elders, he and his wife took up their residence in the same house with Jacob Henrici, the Senior Trustee, and have continued there ever since.

All other averments of said 11th paragraph, not here expressly admitted, are denied.

12th. The averments of the 12th paragraph of said bill are denied as therein stated.

13th. The averments of the 13th paragraph of said bill are denied, except that Mr. Duss at the time he joined the society was about thirty years of age.

14th. The averments of the 14th paragraph of said bill are denied.

15th. We believe that large sums of money have been lost by the conduct and investments of certain of the trustees who were elected prior to the election of John S. Duss, and this included investments in a glass works at Beaver Falls; in the Economy Savings Institution; in the Beaver Falls Cutlery Works and File Works; in the P. C. and Y. Railroad Company, and in conducting the agricultural pursuits of the society. We are not able to give accurately the amount of such losses. We believe that John S. Duss has honestly, faithfully and conscientiously applied the assets of the society toward the liquidation of the large indebtedness thereof. All the allegations in the 15th paragraph of the bill not hereby expressly admitted are denied.

16th. The averments of the 16th paragraph of the bill are denied, except that it is admitted that the trustees, Henrici and Duss, did on the 21st day of December, 1892, execute and deliver to Harry Darlington, trustee, a mortgage to secure the payment

of the sum of four hundred thousand ($400,000) dollars borrowed from him by Henrici and Duss, trustee, for the purpose of paying the debts of the Harmony Society, and this mortgage is upon substantially all the land of the society situate in Harmony Township, Beaver County, Pennsylvania, and Leet Township, Allegheny County, Pennsylvania; it bears interest at six (6) per cent. per annum, and the principal is payable in five (5) years after date, with the privilege of paying any part of said debt, not less than twenty-five thousand ($25,000) dollars at one time after three (3) years from date. We have no knowledge of the specific debts to which the proceeds of said mortgages were applied, but the same will be shown in the answer to be filed by Mr. Duss.

17th. The averments of the 17th paragraph are denied, except that it is admitted that the trustees, John S. Duss and Samuel Sieber, did, on May 31st, 1893, execute and deliver to Harry Darlington, trustee, a mortgage to secure the sum of one hundred thousand ($100,000) dollars borrowed from him by said Duss and Sieber, trustees, for the purpose of paying on the debts of the Harmony Society; this mortgage is upon substantially the same property as described in the mortgage referred to in the preceding paragraph; it bears interest at six (6) per cent. per annum, and the principle is payable in or within three (3) years from date, and the indebtedness to which the proceeds thereof have been applied to be shown in the answer to be filed by Mr. Duss.

18th. The averments of the 18th paragraph of the bill are denied, except that it is admitted that the Harmony Society did own stock in a number of bridge companies, railroad companies, and other corporations in the State of Pennsylvania, but the amount thereof we cannot state; that a considerable portion thereof has been sold by the trustees and the proceeds thereof applied to the payment of the debts of the society. The amount of stocks so held and sold, the proceeds thereof, and upon what account paid, will be fully and specially set forth by Mr. Duss in his answer to said bill.

19th. The averments of the 19th paragraph of said bill are denied, except, that it is admitted that never before in the history of the society were women elected members of the Board of Elders of said society, for the reason that there were always sufficient men to serve in such capacity, and not because of the ineligibility or disqualification of the female members of said society acting in such capacity, there being nothing in the organic laws of the society designating which sex shall or shall not be eligible to serve as elders, trustees, or in any other capacity of said society that may be required. There are now eighteen (18) members in said

society, two of whom, Lena Wolfangel and Philipina Wolfangel, have not been made parties defendant in said bill.

20th. The averments in the 20th paragraph of said bill are denied, except, that the real estate of the society situate in Beaver County and Allegheny County, Pennsylvania, was conveyed by the trustees of the said society to the Union Company, a corporation legally created under the laws of the State of Pennsylvania, with the knowledge and consent of the members of the society and of the Board of Elders thereof. The capital stock of said corporation being four hundred thousand ($400,000) dollars, of which three hundred and ninety-five thousand ($395,00) dollars is held by the trustees of said society, the balance thereof by Conrad Hermansdoerfer, a member of said society, and Henry Hice and James Dickson.

21st. The averments of the 21st paragraph of said bill are denied.

22nd. The averments of the 22nd paragraph of said bill are denied.

23rd. The averments of the 23rd paragraph of said bill are denied.

24th. The averments of the 24th paragraph of said bill are denied.

25th. The averments of the 25th paragraph of said bill are denied.

26th. We admit that the membership has been reduced by death and voluntary withdrawals from time to time since the organization of the society. All other averments of said 26th paragraph of said bill not expressly admitted are denied.

27th. For further answer to the bill the respondents say:

When John S. Duss was, in 1890, appointed a trustee, the actual financial condition of the society was known to no one except Jacob Henrici, and it is doubtful if it was really understood by him. We believe that Mr. Duss began an investigation which it was difficult to either start or carry on, and gradually he arrived at an approximate idea of the real condition of the society, which he found to be sustantially this:

The society owed directly on negotiable promissory notes	$ 317,350.00
The society owed directly on open account	41,000.00
The society owed, due on demand	1,081,000.00
Debt of the Harmony Society	$1,439,350.00

To meet this it had a large amount of stocks (most of which were pledged for the payment of debts), besides real estate and

other property. The most of the debt was presently due or rapidly maturing. Nearly a million of dollars of it was for deposits in the Economy Savings Institution, in which the Harmony Society had the eight-tenths interest, and any run on that bank would have been most disastrous to the financial future of the society.

Mr. Duss, with great care, sold off at good prices many of the stocks and portions of the real estate and borrowed money on mortgage, and with the moneys thus realized paid off the said pressing debts.

The society, to meet the remaining debts, has still ample property, and your respondents believe and aver that they will be able to dispose of sufficient of the property to pay all the debts and yet have left sufficient to support the society. In this investigation Mr. Duss also discovered that the society had lost large sums of money in investments in different industrial enterprises, all of which investments were made prior to the election of Mr. Duss, and for none of those losses is he or his co-trustee, Reithmueller, responsible. The management by the present trustees has been marked with faithfulness and ability, and the result to the society has been most beneficial.

28th. Under the written agreements or contracts hereinbefore referred to, for the government of the Harmony Society, your respondents are advised and believe and charge, that the plaintiffs have no interest, legal or equitable, in the assets or property of the Harmony Society, either by or on account of previous membership in said society, or as the heirs or representatives of others who were at one time members thereof, nor in any other way or manner whatsoever.

Wherefore, having fully answered the averments of the bill, your respondents pray to be hence dismissed, with their reasonable costs in this behalf most wrongfully sustained.

GOTTLIEB RIETHMUELLER,
CONRAD HERMANSDOERFER,
FRANZ GILLMAN,
FREDERICKA MUNTZ,
REGINA LAUTENSCHLAGER,
CHRISTINA RALL,
LENA WOLFANGEL,
PHILIPINA L. WOLFANGEL,
KATRINA NAGEL,
KAROLINE MOLT,
JOHANNA HERMANSDOERFER,
SUSIE C. DUSS,
JOHN S. DUSS.

Her
DOROTHEA X HOEHR,
Mark.
MARIA DIEM,
Her
ELIZABETH X BECK,
Mark.
His
EDWARD X KELLERMAN,
Mark.
BARBARA BOESCH,

Beaver County, ss.

Personally before me came, Gottlieb Riethmueller, Conrad Hermansdoerfer, Franz Gillman, Fredericka Muntz, Regina Lautenschlager, Christina Rall, Lena Wolfangel, Philipina L. Wolfangel, Katrina Nagel, Karoline Molt, Johanna Hermansdoerfer, Susie C. Duss, John S. Duss, Dorothea Hoehr, Maria Diem, Elizabeth Beck, Edward Kellerman and Barbara Boesch, being persons named as Defendants in the Bill of Equity in this case, who, being duly affirmed say, that the allegations contained in the foregoing answer, in so far as stated on their own knowledge, are true, and in so far as stated on information received, they believe them to be true.

Affirmed to and subscribed this Seventeenth day of July, A. D. 1894. HENRY BREITENSTEIN,
Justice of the Peace.

GOTTLIEB RIETHMUELLER,
CONRAD HERMANSDOERFER,
FRANZ GILLMAN,
FREDERICKA MUNTZ,
REGINA LAUTENSCHLAGER,
CHRISTINA RALL,
LENA WOLFANGEL,
PHILIPINA L. WOLFANGEL,
KATRINA NAGEL,
KAROLINE MOLT,
JOHANNA HERMANSDOERFER,
SUSIE C. DUSS,
JOHN S. DUSS,
Her
DOROTHEA X HOEHR,
Mark.
MARIA DIEM,

Her
ELIZABETH X BECK,
Mark.
His
EDWARD X KELLERMAN,
Mark.
BARBARA BOESCH,

IN THE
CIRCUIT COURT OF THE UNITED STATES,
FOR THE
WESTERN DISTRICT OF PENNSYLVANIA.

SITTING IN EQUITY.

No. 11, NOVEMBER TERM, 1894.

CHRISTIAN SCHWARTZ, a citizen of the State of West Virginia; Antony Koterba, David Strohaker and Allen Shale, citizens of the State of Ohio, and G. L. Shale, a citizen of South Dakota,

vs.

JOHN S. DUSS, GOTTLIEB RIETHMUELLER, FRANZ GILLMAN, Conrad Hermansdoerfer, Edward Killerman, Johanna Hermansdoerfer, Susie C. Duss, Karoline Molt, Katrina Nagel, Elizabeth Beck, Marie Diem, Barbara Boesch, Fredericka Muntz, Dorothea Hoehr, Regina Lautenschlager, and Christina Rall, and Henry Hice and John Reeves, citizens of the State of Pennsylvania and residents of the Western District thereof; and The Union Company, a Corporation created by the laws of the State of Pennsylvania, and a citizen thereof, and a resident of the Western District thereof.

To the Honorable, the Judges of the said Court:

The answer of John S. Duss, one of the defendants to the bill of complainants, respectfully shows:

1st. The defendant begs leave to refer to the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th and 9th paragraphs of the answer filed in this case by the other members of the Harmony Society, also defendants in this case, which he approves and adopts as his answer to the first nine paragraphs of the plaintiff's bill of complaint without repeating the same herein at length.

10th. The allegations of the tenth paragraph of the bill are denied. My father, then serving in the Federal Army; my mother, in March, 1862, with me, a child then of two years of age, went to Economy, where she was employed by the Trustees of the Harmony Society as a nurse; my father having died of a wound received at the Battle of Gettysburg, my mother remained in the service of the society continuously (with the exception of two months) until the year 1876.

From the year 1873 to 1876 I attended the Soldiers' Orphans' School at Phillipsburg (now Monaca). Leaving there I returned to my mother at Economy and entered the service of the Harmony Society. After a few months' absence in Germany, in 1876, my mother and I returned to Economy, and in the fall of 1878 I was given a position in the service of the Harmony Society as teacher of the German department of the public school, and remained there until August, 1879, when I left to attend Mount Union College, in the State of Ohio. I left Mount Union in 1882, and went to Kansas as a teacher in the Kansas State Reform School at Topeka, Kansas. In 1883 I purchased a farm in Webster County, Nebraska, of one hundred and sixty acres, paying therefor the sum of $1,280.00, and removed thereto and engaged in the business of farming and cattle raising until the year 1888, when, at the earnest solicitation of Mr. Henrici, I sold all my personal property upon my farm in Nebraska and returned to Economy to take charge of the public school conducted by the Harmony Society.

11th. It is not true that shortly after my arrival at Economy I sought and obtained employment as a school teacher; on the contrary, my coming to Economy was, as hereinbefore set forth, at the earnest solicitation of Mr. Henrici, and for the express purpose of becoming the teacher of the public school conducted by the Harmony Society, and I made no efforts whatsoever to obtain admission into the society.

On the 27th of December, A. D. 1889, Miss Gertrude Rapp, granddaughter of the founder of the society, who had charge of the so-called "Great House," or the residence of Mr. Henrici, died. After the funeral, Trustees Henrici and Lenz chose my mother, who had several years before become a member of the society, to fill the place made vacant by the death of Miss Rapp. This choice was not at my suggestion or instance. I was not consulted with reference to it, and had nothing whatsoever to do with the selection, and the selection was made against my mother's wishes, and she requested Mr. Henrici to excuse her from the duty. A short time afterwards Mr. Henrici again asked her to serve in the place to which she was appointed, which she agreed to do, as she was bound as a member of

the society to obey the order of the trustee. Neither my mother nor any one else ever gained ascendency over the will of Mr. Henrici, on the contrary, Mr. Henrici was of an inflexible and autocratic will, self-sufficient and wholly beyond the influence of any one.

In the fall of 1889, while engaged in teaching school at Economy, Mr. Lenz, then one of the trustees, came to me and suggested that Herman Fischern, a former teacher in the school, and myself, should join the society. Mr. Henrici told me if we would join the society (i. e., Fischern and myself) it would be very acceptable to them. At these suggestions of Lenz and Henrici, the two trustees, I did join the society in January, 1890, and my wife, who was a great friend of Miss Rapp, and who, in the meantime, had been influenced by her, had also so decided.

It is true that on January 2nd, 1890, George Kirschbaum, a member of the Board of Elders, was suddenly killed, and a few days later, John Wirth, another member of the Board of Elders, died of paralysis, and on January 22nd, 1890, Johnathan Lenz, the Junior Trustee, and a member of the Board of Elders, died of hemorrhage of the brain.

Under the constitution of the society, the Board of Elders has the exclusive power to admit new members and to fill the vacancies on the Board, and to elect all officers, and always has had and exercised such power. January 24th, 1890, the Board held a meeting at which they elected me a member of the society, and also a member of the Board of Elders, and, also, at the same time, elected Jacob Nicklaus and Herman Fischern members of the society and also of the Board of Elders.

I did not seek or suggest the election of myself to be a member in the Board of Elders, neither did I have any information of the intention of the Board to elect me until after the meeting at which it was done was over. The said election was in precise accordance with the constitution and usages of the said society, and was by the unanimous consent of the Board of Elders, and was not objected to by any member of the society. Three weeks afterwards, Mrs. Duss, with seventeen others, amongst whom were Henry Feucht and wife, Benjamin Feucht and wife, and Julius Stickel and family, were elected members of the society by the Board of Elders.

It is true that Ernest Woelfel, who in January, 1890, had been elected Junior Trustee in place of Mr. Lenz, deceased, died about July 26th, 1890, of hemorrhage of the brain, and thereupon the Board of Elders, without any suggestion, elected me Junior Trustee in the place of said Woelfel, deceased. The said election was in accordance with the constitution, practice and usages of the said society.

My mother, who, at Mr .Henrici's request, had charge as hereinbefore stated, of the "Great House," died in April, 1891, and the Board of Elders, not at my instance or suggestion, decided that myself and wife should take up our abode in the "Great House," where Mr. Henrici lived; this was done at the instance of Mr. Henrici and in accordance with a resolution of the Board of Elders, and to do this necessitated the separation of myself and wife from our children, a girl and boy, aged respectively, eight and five years.

The truth in respect to the subject matter of the allegations of the eleventh paragraph of the bill is precisely as herein detailed, and otherwise than as herein specifically stated all of the allegations of the said paragraph are denied.

12th. Previous to my going to Economy I never heard of Dr. Cyrus Teed, and did not know there was any such man in existence, or any such community over which he is alleged to preside. The first time that I heard of Dr. Teed was upon a visit of Mrs. Emertz to the town of Economy, some time in the year 1880. Mrs. Emertz, or anyone else, was not admitted into the town of Economy by me or anyone else, either clandestinely or otherwise; she came upon a visit to the town the same as any other person who might so desire would have the right to do. The cause of her visit, as explained by herself, was the fact that she had seen in a newspaper an account of a sermon preached by Mr. Lenz at Economy in respect to the Battle of Armaoeddon, supposed to be referred to in the Book of Revelations; and, as the doctrines of the sermon, as reported in the newspaper, touched upon similar doctrines entertained by the society of which the said Mrs. Emertz is a member, it excited her interest. At this, her first visit, she remained about a week, conversing with Henrici and other members of the Harmony Society, investigating the beliefs of the individual members, and the only connection I had with her was in the fact that she visited the school upon one occasion that I was then teaching. She visited the town of Economy again in the summer of 1891, but not at my instance or request. She said that she had been east and was going west, and that she merely intended to stop off from one train to another, spending a few hours at Economy; but at Mr. Henrici's request, and not mine, she prolonged her visit, and while she was there she was informed that some of her beliefs were misrepresented by members of the community, and Mr. Henrici urged her, for the correction of such misrepresentations, to make a public explanation of her beliefs in the church, which she accordingly did. But in this, the only public address that she made in the town, she said nothing in respect to Teed being the second Messiah, or that he would soon be in their midst. At the close of her ad-

dress I rebuked some of the younger members of the congregation for disorderly conduct during the meeting, and said nothing about Teed or about the doctrines announced by Mrs. Emertz, or about any Messiah; and the allegations of the bill in respect thereto are absolutely false.

It is not true that certain valuable and sacred vestments worn at one time by Father Rapp were sent to Dr. Teed by me, or to any one else. The truth being that the vestments referred to are and have always been highly prized by the Harmony Society, and safely kept in the trustees' residence, where they remain and always have remained until this day; and the allegations in this behalf made in the bill are utterly without foundation whatsoever.

It is not true that I caused to be erected a large and expensive residence on the outskirts of the town of Economy; the truth being that I was the only member of the Board of Elders who refused assent to the erection of the building referred to, and I did, individually, exert all the influence I had to prevent its erection, and am not responsible for its building or for its furnishment. The erection of the said building was made in pursuance of the command and the desire of Mr. Henrici and Elder Fischern, the latter being the superintendent of the saw mill, near to which the house referred to was built; this house was built as a boarding house to accomodate the laborers employed in the mill. So far as I know the erection of this building had no reference whatsoever to any plans or projects of the Koreshan Society, or otherwise than herein expressly stated.

It is true that Henry Feucht was expelled from the society by the Board of Elders on April 25th, 1892. The expulsion of the said Feucht was proposed by John Scheid, the oldest male member of the Harmony Society (excepting only Mr. Henrici) because he had habitually violated his vow of obedience to the government of the society, and was continually lying about and defaming the character of the members, the Board of Elders and the trustees, and by false tale-bearing attempting to stir up strife between the members of the society, and causing to be published in the public press false and malicious misrepresentations as to the condition of the society and its government.

It is true that, after his expulsion, he threatened litigation, but upon my advice and inducement he was restored July 28th, 1892, to membership by the Board of Elders, because the financial condition of the society at that time was such that I believed it would be disastrous to have such condition publicly known, which I thought would probably result from the threatened litigation.

13th. I was nearly thirty years of age when I joined the society

in the month of January, 1890, and was, at that time its youngest male member, although three younger members joined three weeks after I did; the balance of the thirteen paragraphs describing the condition of the society is purely fictitious and without any foundation of fact whatsoever.

14th. Since my election as trustee there never was any plot to turn the society over to Dr. Teed, or any other person, and so there was no failure of any such plot as alleged in the bill. I never, at any time formed or imagined any scheme to wreck or dismember the Harmony Society; but I have, at all times, as particularly shown hereinafter, labored most diligently for its preservation. I never exercised, at any time, any undue control of the Board of Elders, and I never, at any time, directed that no new members should be elected; the allegations in this respect in the bill are utterly false.

It is also untrue that Mrs. Duss was the last member elected into the society, which occurred in February 1890. At the time that she was elected there were seventeen other persons elected members of the Harmony Society, together with her; and since the said election there were elected three other members in February, 1892. I have never at any time arranged for the removal of the members of the society; but, on the contrary, have at all times labored to preserve its membership as far as it was possible for me so to do, and, with the exception of the Feucht and Stickel families and Leonhard Haerer, I have strenuously urged all withdrawing members to remain in the society.

15th. Henry Hice and John Reeves were partners of the Harmony Society in the conduct of a banking business by means of the institution known as the Economy Savings Institution, at Beaver Falls. The capital of said bank was $450,000.00, of which the said Hice and Reeves each owned 1-10, and the Harmony Society 8-10. Judge Hice was president of the bank and Mr. Reeves was the cashier, but in the conducting of the business of the said bank they were subject to the management and direction of Mr. Henrici.

The Beaver Falls Cutlery Works was a manufacturing concern located at Beaver Falls, of which the Harmony Society owned an 8-10 interest, Judge Hice, 1-10 and John Reeves, 1-10.

The Western File Works was a manufacturing corporation operating a plant for the manufacturing of files, in which the Harmony Society owned ..... shares of stock.

The cutlery works were managed under the direction of Mr. Henrici, and he also for some time managed the Western File Works. About December, 1891, I discovered that the Economy

Savings Institution was insolvent, owing about $1,100,000 to depositors and other banks over and above its live assets. For this indebtedness the Harmony Society, as a partner, was liable for the full amount, and the whole of the indebtedness was practically subject to call. When I discovered the condition of the said institution, I immediately set about preparing to meet the liability of the society, not waiting to discuss with Messrs. Hice and Reeves their liability, because they were both unable to meet such an enormous indebtedness, and were both men whom I believed would be perfectly willing to pay their proportion of the same so far as they might be able, the true policy at that time, as I believed, being to save the institution from closing its doors, which would have been utterly disastrous, not only to the Harmony Society but to the depositors of said bank, as well as the entire community. The accounts between the partners have not yet been settled, but I propose to have such settlement and collect from the other partners, Messrs. Hice and Reeves, their proportion of indebtedness due to the Harmony Society, so far as they may be able to pay it. The origin, as well as the connection, of the Harmony Society, with the aforementioned industrial enterprises and institutions, as well as others of a like nature, is explained as follows: The lands of the Harmony Society, at and in the vicinity of Beaver Falls and Economy, comprised about 3,000 acres. It had been for years the policy of Mr. Henrici to develop the value of the lands at Beaver Falls, by promoting in every way he could the growth of the town, and to such end he for years past from time to time induced the location of manufacturing industries of various kinds, notably, the above-mentioned cutlery works and the file works in said town, as well also other business institutions, such as the above-mentioned bank; and as such industries became unprofitable, he had, for a long time, undertaken to sustain them by loans of large sums of money and by investing largely in them, and in the case of the cutlery works by finally purchasing it, in order to maintain it as a going concern, regardless of whether it lost or made money. By such means he thought to add largely to the value of the society's lands in the neighborhood, and as well to carry out his charitable designs in giving employment to large numbers of men; and, finally, by this course of conduct, as well as by giving away large sums of money for charitable purposes, and an annual loss of about $100,000.00 in conducting agricultural operations and maintaining a large number of laborers at the town of Economy, succeeded by the year 1891 in accumulating an indebtedness for the society of over $1,500,000.00. Every dollar of the assets of the society used by me for the purpose of meeting this indebtedness has been

honestly applied to its payment, and not one cent thereof has been diverted for my own use or any other use than that of the Harmony Society.

16th. It is true that, on the 21st day of December, 1892, Mr. Henrici and myself, as trustees of the Harmony Society, for the purpose of paying the indebtedness of the said society, borrowed from Harry Darlington, trustee, the sum of $400,000, and to secure the payment thereof made and executed a mortgage upon the principal part of the society's lands lying in the Counties of Allegheny and Beaver. The said mortgage was immediately recorded in the office of recorder of deeds in the County of Allegheny and in the County of Beaver.

It is not true that the said mortgage was made without any authority from the society; but, on the contrary, though not required so to do under the articles of government established by the Harmony Society, yet I did, personally, before the execution of the said mortgage, explain to the entire society, the greater portion of whom had assembled in the council room on my call (a few being sick), the intention of the Trustees to make such mortgage and the necessities therefor; and, after such explanation, each member of the society, excepting only Henry Feucht and his wife and Benjamin Feucht and his wife, consented and agreed to the making and the execution of the said mortgage. The said money was borrowed, as hereinbefore stated, for the paying of an indebtedness, for which the said society was liable for the whole amount thereof. As is hereinafter shown, the society has now an abundance of assets to meet the said mortgage indebtedness, and there is no purpose, intention or danger of the said mortgage being foreclosed, and but for the borrowing of the said money the said society would have been hopelessly insolvent, and all its assets sacrificed for the partial payment of its debts. About the time of the making of the said mortgage the insolvency of the society was accepted as a fact by friend and foe, and such condition was well known to certain men who had sustained long personal relations with Mr. Henrici, and who so long as Mr. Henrici lived did not desire to disturb or embarrass him, but in anticipation of his death, formed, or attempted to form syndicates of capitalists for the express purpose of taking advantage of the society's insolvency and procuring its valuable assets at prices far below their real value so soon as Mr. Henrici should depart this life. Their expectations, however, in this behalf have been defeated by my efforts in securing the said loans and the management of the other assets of the society for the liquidation of its indebtedness. The bitterness resulting from

the frustration of their plans I believe accounts in a large measure for the scandalous character of the bill filed herein.

17th. It is admitted that on the 31st day of May, 1893, the said defendant, with Samuel Sieber as his co-trustee (Mr. Henrici then being dead, said Samuel Sieber being the successor of Mr. Henrici), did negotiate a second loan from Harry Darlington, trustee, for the sum of $100,000, and to secure the payment thereof executed a mortgage of said date upon the lands of the society described in the said $400,000 mortgage; no specific appropriation was made of this money, but the same was deposited in bank and used as other moneys of the society in the prosecution of the business of the said society and in the liquidation of its indebtedness. The said last-mentioned mortgage was made upon the authority hereinbefore mentioned.

It is denied that most of the members of the society up to the present time are in ignorance of the negotiation of the said mortgage, as the trustees communicated with the Board of Elders and other members of the society at the time the transaction took place. The said loan was not made for the purpose of inducing the withdrawal of any member of this society, and had no relation whatsoever thereto, but was made because the needs of the society absolutely required the use of the money for the payment of its indebtedness and in the prosecution of its business. Ten thousand dollars of the principal of the said mortgage has been paid.

18th. The society was formerly possessed of certain stocks and bonds in bridge companies, railroad companies, water companies and other corporations, but the same, instead of being of the value of $2,000,000, as alleged in the bill, did not exceed in value $500,000 at the time of my election as trustee; some of the said stocks and bonds, but not all or substantially all, have been sold by the trustees from time to time, as the necessities of the society required for the payment of its debts, as will be more fully explained hereinafter. No bonds or stocks or any other assets of the society have been sold for any other purpose, and the sale of those that have been sold has been made absolutely necessary by the pressing financial necessities of the society.

I have in connection with my co-trustee, between April 1st, 1892, and June 30th, 1894, sold for and applied to the purpose abovementioned the following stocks of the par value and for the price mentioned:

Stocks, etc.	*Par Value.*	*Sales.*
Bank of Pittsburgh	$ 9,650 00	$ 19,300 00
Allegheny National Bank	3,500 00	4,690 00
M. & M. National Bank	8,900 00	13,327 75

Stocks, etc.	*Par Value.*	*Sales.*
Rochester National Bank	5,000 00	6,140 00
P., Ft. W. & C. R. W. Co.	2,700 00	4,412 12
Monongahela Water Co.	129,250 00	152,773 83
Beaver Falls Bridge Co.	27,000 00	27,000 00
Beaver Falls Gas Co.	41,700 00	25,020 00
The Tidioute Bridge Co.	19,300 00	6,433 33
Birmingham & Tenth St. Bridge Co.	2,500 00	7,062 50
Union Drawn Steel Company	50,000 00	75,000 00
	$299,500 00	$341,159 53
Also the following bonds:		
Chartiers Block Coal Company	3,000 00	3,018 00
Point Bridge Company	13,000 00	13,426 53
L. S. & M. S. R. R. Company	102,000 00	102,000 00
P., C. & Y. R. R. Company	282,000 00	249,294 20
	$400,000 00	$367,738 73

19th. The allegations of the nineteenth paragraph of the bill are denied. I have not at any time induced any member of the society to withdraw from its membership. I have not willingly allowed the withdrawal of any member, excepting only Henry Feucht and wife, Benjamin Feucht and wife, Tirza Feucht, the Stickel family and Leonard Haerer. Every other member of the society who has left during my trusteeship has left against my advice and solicitation to remain.

It is true that Samuel Sieber, Hugo Miller, Jacob Nicklaus, Blazsius Platz and Moritz J. Frederichs have withdrawn from the society, and each of them did so against my advice and all the reasonable persuasion that I could use to induce them to remain. At the time of their withdrawal, in accordance with the provisions of the articles of government of the society, wherein it is provided that the trustees shall have and exercise the right to make donations to seceding members as they may deem prudent, we did donate and pay Hugo Miller $5,000, Samuel Sieber $1,000, Jacob Nicklaus $5,000, Blazsius Platz $5,000 and Moritz J. Frederichs $5,000. I have not secretly and frauduently appropriated several hundred thousand dollars, nor any other sum, and the allegations to such effect in the bill I believe to be malicious and false, without any information upon which to make such allegation, and without any belief in its truth by any of the plaintiffs. It is true that by reason of the demise and withdrawal of several of the male members of the society, there were not a sufficient number of men remaining to

make up the full number of the Board of Elders required by the articles of government, and when this condition came about I consulted with competent counsel as to the advisability of keeping the Board of Elders up to the number established by the articles of government, as well as to the eligibility of female members for service upon the said Board; and acting under the advice of said counsel I submitted the question to the society itself at the council room at a meeting held June 7th, 1893, when the majority of the members were present, and the society decided to fill the vacancies then existing in the Board of Elders in accordance with the advice of counsel. While the Board of Elders, under the articles of government had the power and the right to fill all vacancies on the Board, yet at the meeting referred to I suggested to the members that each member of the society, for himself or herself, should write upon a slip of paper the names of three members of the society whom they desired should fill the vacancies upon the Board of Elders, and their wishes in this respect so expressed would be taken as a suggestion by the Board of Elders in the filling of the vacancies. In response to the wishes of the society so ascertained and expressed, the Board of Elders elected Regina Lautenschlager, Fredericka Muntz and Susie C. Duss members of the Board.

On June 26th, 1893, there being a vacancy in the Board of Elders, Maria Diem was elected a member of the said Board. On July 6th Samuel Sieber, having resigned his trusteeship, the vacancy in the Board of Elders was filled by the election of Karoline Molt.

It is not true that never before in the history of the society were women eligible to such position; but, on the contrary, women have always been eligible to membership in the Board of Elders, under the articles of government adopted from time to time by the society. The women mentioned as elected upon the Board of Elders were from the most intelligent members of the society, or that the society ever possessed; and with the exception of Mary Diem, have been faithful in their attendance at the regular weekly meetings of the Board, and have taken an active part in the management of the internal concerns of the society, and fully understand all matters submitted to the Board, and intelligently and competently exercise their judgment and decision in the matters submitted to the Board. During my administration all matters within the jurisdiction of the Board, as established by the articles of government, were and are submitted to the said Board for its consideration. I have neither the entire control or management of the society, nor do I exercise any rights, powers or authority other than those conferred upon me as trustee and as a member of the Board of Elders under the constitution, and only then in so far as I deem it my absolute duty.

It is not true that I fraudulently or by secret and fraudulent representations, induced and coerced, and by the payment of large sums of money to the parties named in paragraph nineteenth, persuaded them to leave the society. I consented to the withdrawal of Julius Stickel, his wife, Pauline Stickel, and Bertha Georatsch, her daughter, because the said Julius Stickel had taken an active part in the promotion of the litigation instituted by the Feuchts, which aimed at the very existence of the society, seeking to destroy it; and the Board of Elders and other members of the society requested their withdrawal. I was opposed to the withdrawal of Sigmund Stiefvater and Christina Haerer and Elizabeth Sieber, and tried to induce them to remain. Benjamin Feucht, Henry Feucht and wife and Tirza Feucht withdrew from the society after they had been defeated in the objects of a certain litigation which they had brought against the society by Shiras & Dickey, their solicitors, and now solicitors for the present plaintiffs; and after they had, under the advice of their counsel, dismissed their suits against the society, I did (at the request of Shiras & Dickey, and in exercise of the rights of the trustees to make donations to withdrawing members), as trustee, pay to their attorneys $28,000 cash for the five members of the Feucht family, and $150 in lumber, and conveyed to them a seven-acre tract of land in Stowe Township, worth about $15,000. When the trustees made these payments to the attorneys for the Feucht family we had no idea or conception that such payments were fraudulent or secretly made, as now alleged in the bill, as the counsel for the Feucht family were reputable members of the bar, and I supposed that they would not take part in inducing or advising me to make a payment that was in any sense fraudulent or in violation of my right as a trustee to make; and I now aver, in defense of their act in receiving and of my act in making the said donations, that the said payments were not fraudulently or secretly made, but were made upon the advice of counsel and in the exercise of the powers conferred upon the trustees under the articles of government of the said society.

The Feucht family, and especially Henry Feucht, had kept the society in a continual turmoil, and Henry Feucht was the chief instigator of all internal dissensions and strife, and at the most critical period in the financial condition of the society had brought the suit referred to for the avowed purpose of accomplishing the destruction of the society, and thus defeating the work I was then engaged in of restoring the confidence of the creditors of the Harmony Society and the liquidation of its debts.

I made the payments above-mentioned for the purpose and under the belief that the internal peace and harmony of the society would

be restored thereby; and litigation clouding the title of the society to its assets, and so exciting the fears of the financial institutions with which we had to deal would be avoided. Shortly after I had made these payments, to-wit, on May 27th, 1893, I was informed of the preparation of the present bill through the counsel for plaintiffs, who were formerly counsel for the Feucht family. I then realized that the belief I had entertained was mistaken, and that the purposes for which said payments were made had in part failed.

All payments made to withdrawing members were reported to and discussed by the Board of Elders.

The membership of the society now consists of eighteen persons, one having died since the filing of the bill herein. The trustees consult with the Board of Elders in all matters pertaining to the management of the internal affairs of the concern, and in all important matters the trustees consult with the entire membership of the society, and they are kept fully advised of all transactions of any moment relating to the affairs of the society.

20th. I did not, secretly or otherwise, at any time, enter into any arrangement whatsoever with Hice, Reeves and Dickson or any other person, to convey the town of Economy and other lands of the society to the Union Company, as related in the bill. It is true that my co-trustee and myself have made a deed conveying the real estate of the society situate in Harmony township and Beaver Falls, both in the County of Beaver, and also lands in Leet township, Allegheny County, and a thirty-four acre tract adjoining the borough of Sewickley.

The trustees made such conveyance, not only in the exercise of full power in this behalf given to them by the constitution of the society, but only after consultation with and approval of the Board of Elders and of each individual member of the society; each individual member of the said society previous to such conveyance having signed a written article, wherein each agreed and consented to the conveyance of the property for the reasons and purposes expressed in said paper, and I hereto attach a true copy of the said writing, signed by every member of the said society, and pray that the same be taken as a part of this answer, which is marked Exhibit "H," and I so show to your Honors that the allegation in said bill that such conveyance was made without any authority from the members of the society is utterly without any foundation of fact, and is only one of many such reckless or malicious statements made in the said bill without information upon which to make the same.

The Union Company, the grantee in the said deed, is a corporation of the State of Pennsylvania, created for the purpose of the

purchase and sale of real estate, or for holding, leasing and selling real estate. Its capital stock is $500,000, the whole of which is owned by and held for the Harmony Society; —— shares, amounting to $397,500 of the said capital standing in the name of the trustees of the said society; ten shares in the name of John S. Duss; ten in the name of Henry Hice; ten in the name of Gottlieb Riethmueller; ten in the name of Conrad Hermansdoerfer, and ten in the name of James Dickson. The shares so held by Duss, Reithmueller, Hermansdoerfer, Hice and Dickson are held in trust for the society, and were issued to them for the purpose of qualifying them to act as directors of the corporation. No part of the capital stock of the said Union Company was issued to or stood in the name of John Reeves, and said Reeves has no interest therein whatsoever.

The conveyance to the said Union Company was made upon the advice of competent counsel, and for the following reasons: The indebtedness of the society made it absolutely necessary for the payment of the same to convert a portion of its lands, from time to time as the same might be sold, into cash for the payment of the said indebtedness. So long as the title to the land stood in the name of the trustees of the Harmony Society, upon the sale of each lot it was necessary that the title of the trustees thereto should be examined by the counsel for each individual purchaser; thus perhaps leading to an investigation by as many separate counsel as there were purchasers, and great inconvenience and annoyance would be the inevitable result of so many separate investigations, as well as great delay and expense, for the reason that each investigation would require time, and the history and the constitution of the society not being familiar to the parties purchasing, or perhaps to their several counsel. To avoid this and to make the lands readily marketable, counsel advised the transfer of the title from the trustees to the said Union Company constituted as aforesaid, in the belief that if the title made by the trustees to the Union Company were once examined and certified to by eminent counsel, or determined by the Courts of the State after judicial inquiry, a great deal of delay, expense and inconvenience attending so many separate investigations as above referred to would be avoided, and conveyances thereof could be readily made. The said conveyance has not destroyed the ownership or interest of the Harmony Society therein, for the reason that it is owner of the entire capital stock of the said Union Company, and so the real beneficial ownership of said lands still remains with the society.

I deny that such transfer was beyond the powers of the trustees or was a breach of trust, but on the contrary I show unto your

Honors that the said conveyance was made in pursuance of explicit power in that behalf conferred upon the trustees by the constitution of the society, and solely for the promotion of its best interests and not otherwise.

21st. Each and all of the allegations of the twenty-first paragraph of the bill are utterly and absolutely false. I have never for a moment conceived or had any purpose of winding up and dissolving the said society, or any desire to have the remaining members thereof withdraw; but on the contrary I have exerted myself in every way possible to save the society from bankruptcy, and to preserve its membership as far as it was possible for me to do so. Franz Gillman and Edward Kellermann, who had become unnecessarily agitated at the time settlement was made with the parties hereinbefore mentioned, were absolutely refused settlement by me repeatedly, and finally subsided and are now peaceful and happy. The trustees have not abolished the pursuit of agriculture; the truth being that in this present season they will raise more wheat than has been raised for many years on the lands of the society—more than an average crop of hay and an average crop of oats. The only thing that has been reduced in the agricultural operations of the society is the number of employees engaged, the trustees now farming to almost the same extent as in years gone by, with less than one-third the labor then employed. The agricultural operations and the maintaining of the town of Economy as carried on by the former trustees, were so carried on at an annual loss to the society, as near as can be estimated, of over $100,000; while, by the operations now being carried on by the present trustees, the maintenance of the society will cost only about $10,000 for the year 1894. The trustees still prosecute the farming of the society's lands according to the wishes of the members of the society.

Elizabeth Beck, mentioned in the said paragraph, was an old member of the society, and previous to June 8th, 1894, had resided in her own house in the village, with a family placed there for the purpose of taking care of her. On account of her old age she at times became so weak and childish that it was thought best by the Board of Elders, upon the suggestion of Fredericka Muntz, one of the oldest members of the society and one of the members of the Board of Elders, and Trustee Riethmueller, and not upon any suggestion of my own, that she should be put under the personal care of Fredericka Muntz. For such purpose Fredericka Muntz fitted up a room in a house thirty feet from her house, making it more comfortable and pleasant than the room then occupied by the said Elizabeth Beck. Having so specially prepared the said room, Fredericka Muntz persuaded her to remove thereto, where she would

be constantly under the care and nursing of a sister of the said Fredericka Muntz and a servant. Her room so occupied was one of the most comfortable in the village, and every kindness, attention and care was bestowed upon her. She died on July 28th, 1894, and her last days were more comfortable and pleasant and spent among more of the comforts of life than perhaps many that she lived in the village, and far more comfortable than those of many of the other inhabitants of the village heretofore.

22nd. The allegations of the twenty-second paragraph of the bill are denied.

23rd. The allegations of the twenty-third paragraph of the bill are denied. The fact is that my method of living is as plain and frugal as that of the majority of the other members of the society, and the other members of the society have now more of the comforts of life and more social freedom than they have at any time hitherto had or enjoyed.

24th. I am not a man of bad moral character, and I believe, from assurances given, that I possess the confidence and trust of all men with whom I have had business relations and who have had opportunity to see and know my disposition and conduct in any of the relations that I have borne to the community. I hold no religious views at variance with the creed of the society. I do not clearly understand the insinuation attempted to be conveyed by the ambiguous language used with reference to the young woman mentioned in the said paragraph, but I aver that my relations with the person named have always been honorable, and the insinuation made is an infamous and cruel libel upon a virtuous and innocent girl, who is not a party to this suit or in any wise concerned herein, and who has no method of defense in this cause. I have sent no money to Dr. Cyrus Teed or any other person mentioned in the said paragraph, as charged in said bill.

25th. The averments of the 25th paragraph of the bill are denied.

26th. The allegations of the 26th paragraph of the bill are denied as therein stated. Some of the members of the society, including those heretofore mentioned, have, as throughout the entire history of the society, from time to time retired, as hereinbefore stated, and to those members retiring under my trusteeship, the trustees, in the exercise of their right under the constitution of the society, have paid the several sums hereinbefore mentioned as donations upon their departure.

27th. Under the written agreements or contracts hereinbefore referred to for the government of the Harmony Society, and

under repeated decisions of courts of the highest authority in the interpretation thereof, this respondent is advised and believes and so avers that the plaintiffs have no interest, legal or equitable, in the assets or property of the Harmony Society, or in the management thereof, by or on account of previous membership in the said society; or as heirs or representatives of others, who were at one time members thereof; or in any other way or manner whatsoever.

28th. All allegations of the bill not specifically and expressly in this answer admitted to be true, I deny, and aver that the same are false.

29th. After I was appointed trustee in the summer of 1890, realizing that my co-trustee, Mr. Henrici, then eighty-seven years of age, in the course of nature would in a short while pass away, and knowing that no records or books of account were kept by the society showing its assets or liabilities, and that all such information rested in the knowledge and memory of Mr. Henrici only, I began an investigation for the purpose of ascertaining during Mr. Henrici's lifetime, as near as possible, the condition of the society. Mr. Henrici was very reticent and resented inquiry. This reticence was due to the misrepresentations made to Mr. Henrici by Henry Feucht. Such documents as the society did possess were not filed away in any one place, but were poked away in all kinds of places—some in the safe or other places at the store, some in the vault at the "Big House," some in Mr. Henrici's desk, bureau drawers, chests, and in fact, throughout various wardrobes, trunks and boxes from garret to cellar throughout the house; some at places in Pittsburgh, some at Tidioute, and at various other places where the society owned property. Owing to this chaotic condition of the papers belonging to the society, and to the fact that no books of account were kept and Mr. Henrici's reticence, I found it almost impossible to start or prosecute inquiry with any hope of success. It required the exercise of the greatest tact, as well as most diligent labor to make any headway in the investigation at all. By December, 1891, I had ascertained sufficient in respect to the financial condition of the society to know that its reputed great wealth was a myth, and such wealth as it did possess in its then condition was more than equalled by its enormous load of indebtedness. After gathering up such shreds of knowledge as I was able to become possessed of and the various papers and documents of the society, I became convinced that, to ascertain anything accurately as to the financial condition of the society, it would be necessary to employ a skilled accountant. The cashier of the Farmers' De-

posit National Bank of Pittsburgh, which bank was one of the creditors of the society, recommended to me for such person Mr. James Dickson, a well-known expert accountant of the City of Pittsburgh. Accordingly I employed Mr. Dickson April 1st, 1892, and put him in possession of such information and papers as I had been able to find.

Mr. Dickson's work revealed the condition of the society to be substantially as follows, as of April 1st, 1892:

The society then owed, practically on demand, over $1,500,000 of indebtedness, including accrued interest. This indebtedness was evidenced by negotiable promissory notes to the amount of $317,350; by open accounts to the amount of $41,000; and sums due on demand to the amount of $1,081,000; making a total indebtedness for which the society was immediately liable of $1,439,350, which, with the accrued interest thereon, aggregated the above mentioned sum. Over $360,000 of this indebtedness was then held by certain banks in Pittsburgh and in New York. The debts due to the banks in Pittsburgh had been secured by collateral, being various stocks and bonds owned by the society, among which were the second mortgage bonds of the P., C. & Y. R. R. Company, which formed a large part of the collateral.

In the fall of 1891, of the collateral held by the banks to secure the then owing indebtedness, which was then more than the amount above mentioned, there were about $137,000 quick assets that might be converted readily into cash, and about $160,000 not marketable.

At that time the Pittsburgh banks became dissatisfied with the collateral and insisted upon additional security, so that we were compelled to prepare a second mortgage on our brickyard and Leetsdale property for such additional security. The necessity for this, however, was obviated by effecting a sale of the majority interest in the capital stock of the P., C. & Y. R. R. Co. held by the society to the Pennsylvania Company, one of the terms of which was that said company should furnish a sufficient guaranty of the second mortgage bonds of the said railroad held by us. This transaction was effected only after months of laborious and careful negotiation. It made our second mortgage bonds good to the extent of $240,000 and enabled us to realize about $94,000 on our holdings in the capital stock of the company.

This transaction, completed about January, 1892, enabled us to pay some of our most pressing debts, particularly an indebtedness of about $163,000 due the State Treasurer, $150,000 of which was on account of State funds held on deposit in the Economy Savings Institution, and also to quiet the fears of the Pittsburgh

banks and induce them to carry the society's notes then held by them for the time being. The only quick assets the society owned in the fall of 1891, previous to this transaction, outside of those pledged to the banks, amounted to about $76,000, and a large part of these were not immediately available, because they consisted of stocks in various corporations, the certificates for which, formerly issued to the society, were mislaid or lost.

A short time after the Pittsburgh banks began to call upon us for more collateral, about November, 1891, and not sooner, I discovered that the Economy Savings Institution, an ordinary partnership in which the Harmony Society owned an eight-tenth interest, was indebted to the amount of $1,100,000, about $1,000,000 of which indebtedness was due to about 3,500 depositors in the said institution, and practically subject to call; to meet this indebtedness the bank had an average daily cash balance of only a few thousand dollars, fluctuating say between $2,000 and $20,000. The situation was, in short, this: The society, owing subject to call over $1,500,000, had in the fall of 1891 about $40,000 available quick assets unpledged. While the society owned assets that in time by wise management could be made available, as I did make them available, as hereinafter related, yet the situation confronting me was precisely as above stated.

From the fall of 1891 and throughout the year 1892 various rumors were put in circulation as to the solvency of the Economy Savings Institution. Some of these rumors were started by Henry Feucht, a member of the society. We had at all times the greatest difficulty in allaying the fears of the depositors and preventing a run on the bank throughout a period of eighteen months, and we were only enabled to keep its door open at all by from time to time, as opportunity offered, selling a lot or other property here and there and putting the proceeds in the bank.

When I discovered the condition of the society I became perfectly satisfied that, if it was to be saved from utter ruin it was absolutely necessary to negotiate a large loan with which to meet the more dangerous debts, particularly the debts due to the depositors in the Economy Savings Institution. To set about to obtain such loan was a matter of grave importance and difficulty, as the search for the needed relief had to be conducted with the greatest secrecy to prevent our condition becoming generally known; and the party to whom we should apply must needs be a man of business qualifications, with legal knowledge to understand our peculiar affairs, and access to the necessary financial resources.

After casting about for nearly a year, each day of which

threatened ruin, to find some such person from whom I could reasonably expect to borrow money sufficient to meet our indebtedness, I determined, in the fall of 1892, to state fully the circumstances to Mr. J. T. Brooks, the general counsel and second vice-president of the Pennsylvania Company, and one of the executors and trustees under the will of the late J. M. McCullough. Through him, for the purpose of meeting the great danger that then threatened us, and for no other purpose, I effected a loan from Harry Darlington, trustee as hereinbefore narrated, in the sum of $400,000, securing the same by the mortgage heretofore mentioned. With the money so borrowed, and with other money realized from the sale of other assets of the society from time to time as I could make favorable sales, I was enabled to release the hypothecated assets of the society, making them available for sale, and thereby largely reduce the pressing debts of the society, and to a great extent averted the immediate danger of insolvency. To effect these transactions required the most diligent and unceasing effort, and at the same time I was embarrassed greatly in all financial operations I undertook by the malicious misrepresentations made by persons without and within the society and false and meddlesome statements continually appearing in the public press, tending and intended to excite the fears of our creditors and financial institutions with which we had dealings, as well as causing me great difficulty and annoyance within the society itself.

The total results since I took active charge are that I have, by prudent disposition of its assets, paid off of the entire indebtedness of the society up to July 1st, 1894, the sum of $1,545,627.67. Of the amount so paid, the sum of $1,142,125.17 has been paid in discharge of the debts due to some 3,500 depositors in the Economy Savings Institution, hundreds of whom have thereby been saved from absolute ruin in the loss of all their savings.

The society now owes, as of July 1st, 1894, besides its mortgage indebtedness of $490,000, the sum of $74,093.89, to meet which indebtedness it has personal assets abundantly sufficient to fully liquidate the same, and real estate available for sale sufficient to meet the mortgage indebtedness at the time it matures, and, under prudent management and ordinarily favorable financial conditions, will have sufficient left to maintain the society and care for its membership. These results have been accomplished under the most trying circumstances, arising from internal dissensions in the society, created and fostered by some of the members who have since withdrawn, as well as by enemies without the society, greatly embarassing me in almost every attempt I made; heaping contumely and personal abuse upon me, both

in private and public; instituting vexatious litigations, clouding the title of the society to all its assets, and creating suspicion on the part of the public and financial institutions against my management, and this too throughout a season of the severest financial distress that this country has ever known.

I have performed all the labor required to accomplish these results simply in the discharge of my trust, and without one cent of compensation other than my bare maintenance as a member of the society; and, in this uncompensated service, I have given up the best years of my life and have denied myself and family most of the comforts and conveniences ordinarily pertaining to civilized conditions of life. For not one dollar of this enormous indebtedness that I was compelled to meet, both before and after the death of Mr. Henrici, am I responsible. I had no part in the contracting of the same. The only responsibility I had in connection with it was the responsibility I assumed in attempting its payment; not a single dollar of the society's money has been diverted by me to my own use, or to any other than the use of the society.

Since the employment of Mr. Dickson, careful and accurate accounts have been kept of the transactions of the society, and I challenge the fullest investigation of the same; the more fully the same may be investigated, the clearer will it appear that I have discharged fully and honestly my trust.

And so, having fully answered the plaintiff's bill, I pray to be hence dismissed, with my reasonable costs in this behalf most wrongfully sustained.

J. S. DUSS.

WATSON & MCCLEAVE,
C. S. FETTERMAN,
Solicitors for Defendants.

ALLEGHENY COUNTY, *ss.*

Personally before me, the undersigned, a Notary Public duly commissioned in and for the county aforesaid, came John S. Duss, who, being by me duly affirmed according to law, did depose and say that the facts set forth in the foregoing answer, so far as they be within his own knowledge, are true, and so far as stated upon information he verily believes them to be true.

JOHN S. DUSS.

Affirmed and subscribed before me this 3rd day of August, 1894.

[SEAL.] L. H. MATTHEWS,
Notary Public.

IN THE

CIRCUIT COURT OF THE UNITED STATES,

FOR THE

WESTERN DISTRICT OF PENNSYLVANIA.

SITTING IN EQUITY.

No. 11, NOVEMBER TERM, 1894.

CHRISTIAN SCHWARTZ *et al.*

vs.

JOHN S. DUSS, GOTTLIEB RIETHMUELLER, HENRY HICE, *et al.*

To the Honorable, the Judges of the said Court:

The answer of Henry Hice, one of the defendants above-named to the bill of complainants, respectfully shows:

Said defendant having carefully read and considered the general answer of the members of the Harmony Society and the individual answer of John S. Duss, and believing the same to be a full and complete answer to the plaintiff's bill of complaint, fully concurs in all that said Duss and the other members of the Harmony Society therein say concerning this defendant's connection in any way whatever, with the Harmony Society and the several manufacturing industries and corporations therein specified, and adopt said answers so far as the same in anywise refers to him directly or indirectly in connection with the said Harmony Society, the several manufacturing industries, and the corporation known as the Union Company, as his answer to said bill of complaint without herein repeating the same at length.

WHEREFORE, Your respondent prays to be hence dismissed, with his reasonable costs in this behalf most wrongfully sustained.

HENRY HICE.

STATE OF PENNSYLVANIA, }
COUNTY OF BEAVER, } *ss.*

Personally appeared before me the above-named defendant, Henry Hice, who being duly sworn, says that the facts set forth

in the forgoing answer are true to the best of his knowledge and belief.

HENRY HICE.

Sworn and subscribed before me this 4th day of August, 1894.

[SEAL] JAMES F. MERRIMAN,
Notary Public.

IN THE
CIRCUIT COURT OF THE UNITED STATES,
FOR THE
WESTERN DISTRICT OF PENNSYLVANIA.

SITTING IN EQUITY.

No. 11, NOVEMBER TERM, 1894.

CHRISTIAN SCHWARTZ *et al.*
vs.
JOHN S. DUSS, GOTTLIEB RIETHMUELLER, JOHN REEVES *et al.*

To the Honorable, the Judges of the said Court:

The answer of John Reeves, one of the defendants above-named to the bill of complainants, respectfully shows:

Said defendant having carefully read and considered the general answer of the members of the Harmony Society and the individual answer of John S. Duss, and believing the same to be a full and complete answer to the plaintiffs' bill of complaint, fully concurs in all that said Duss and the other members of the Harmony Society therein say concerning this defendant's connection in any way whatever with the Harmony Society and the several manufacturing industries and corporations therein specified, and adopt said answers so far as the same in anywise refers to him, directly or indirectly, in connection with the said Harmony Society, the several manufacturing industries and the corporation known as the Union Company, as his answer to said bill of complaint without herein repeating the same at length.

Wherefore, Your respondent prays to be hence dismissed, with his reasonable costs in this behalf most wrongfully sustained.

JOHN REEVES.

STATE OF PENNSYLVANIA, }
COUNTY OF BEAVER, } *ss.*

Personally appeared before me the above-named defendant, John Reeves, who being duly sworn, says that the facts set forth in the foregoing answer are true to the best of his knowledge and belief.

JOHN REEVES.

Sworn and subscribed before me this 4th day of August, 1894.

[SEAL] JOHN N. DUNN,
Notary Public.

IN THE
CIRCUIT COURT OF THE UNITED STATES,
FOR THE
WESTERN DISTRICT OF PENNSYLVANIA.

SITTING IN EQUITY.

No. 11, NOVEMBER TERM, 1894.

CHRISTIAN SCHWARTZ *et al.*
vs.
JOHN S. DUSS, GOTTLIEB RIETHMUELLER, THE UNION COMPANY *et al.*

To the Honorable, the Judges of the said Court:

The answer of the Union Company, one of the defendants above-named to the bill of complainants, respectfully shows:

John S. Duss, one of the defendants above-named, and president of the Union Company, above-named defendant, having in his individual answer to be filed herewith fully set forth the objects and purposes for which the said Union Company was organized, respectfully refers to and adopts the several paragraphs of said answer relating to the organization and purposes of said Union Company as the answer of said company, without repeating the same herein at length.

Wherefore, Your respondents prays to be hence dismissed, with its reasonable costs in this behalf most wrongfully sustained.

JOHN S. DUSS.

STATE OF PENNSYLVANIA, } ss.
COUNTY OF ALLEGHENY. }

Personally appeared before me John S. Duss, president of the Union Company, defendant above-named, who, being duly affirmed, says that the facts set forth in the foregoing answer are true to the best of his knowledge and belief.

JOHN S. DUSS.

Affirmed and subscribed before me this 4th day of August, 1894.

[SEAL] JOHN N. DUNN,
Notary Public.

IN THE
CIRCUIT COURT OF THE UNITED STATES,
FOR THE
WESTERN DISTRICT OF PENNSYLVANIA.

SITTING IN EQUITY.

No. 11, NOVEMBER TERM, 1894.

CHRISTIAN SCHWARTZ, a citizen of the State of West Virginia; Antony Koterba, David Strohaker and Allen Shale, citizens of the State of Ohio, and G. L. Shale, a citizen of South Dakota, Plaintiffs,

vs.

JOHN S. DUSS, GOTTLIEB RIETHMUELLER, FRANZ GILLMAN, Conrad Hermansdoerfer, Edward Killerman, Johanna Hermansdoerfer, Susie C. Duss, Karoline Molt, Katrina Nagel, Elizabeth Beck, Marie Diem, Barbara Boesch, Fredericka Muntz, Dorothea Hoehr, Regina Lautenschlager, and Christina Rall, and Henry Hice and John Reeves, citizens of the State of Pennsylvania and residents of the Western District thereof; and The Union Company, a Corporation created by the laws of the State of Pennsylvania, and a citizen thereof, and a resident of the Western District thereof, Defendants.

REPORT OF MASTER.

To the Honorable the Judges of the Circuit Court of the United States for the Western District of Pennsylvania:

The undersigned, having been appointed by your Honorable

Court, upon agreement and request of the parties, examiner and master in the above stated case, with authority to hear and take all the testimony and to find all the issues of law and facts and to report the testimony and such findings to the Court—as appears by the certificate hereto annexed—respectfully reports:

That in pursuance of notice to the parties, plaintiff and defendant, through their respective counsel, and upon adjournments made from time to time with consent of counsel, he heard and took the testimony which is herewith reported and returned to your Honorable Court.

The bill in this case is filed by the plaintiffs, claiming to be heirs of persons formerly members of a society known as the "Harmony Society"—and who continued to be members thereof until their withdrawal or death—against all of those composing said society at the time of filing the bill, together with Henry Hice, John Reeves and the Union Company, a corporation, who are alleged to be co-conspirators with John S. Duss, one of the members of the society, in an attempt to wreck the society and obtain possession of its property, alleging that all the purposes for which the society was founded have been abandoned, and that by common consent the society had ceased to exist as an association and been dissolved, and that its assets had reverted to the donors thereof, among whom were the ancestors of the plaintiffs, and praying for the appointment of a receiver and a division and distribution of the assets of the society amongst those legally entitled thereto, including the plaintiffs. The defendants, in their answers, deny these allegations of the plaintiffs, and also deny that the plaintiffs have any right to any of the property of the society or to intermeddle with its affairs.

In the agreement of the parties for the appointment of the master in this case are the following provisions, viz.: "That to said Thomson shall be given, as examiner and master, the authority to hear and take all the testimony, and to find all the issues of law and facts, and to report the testimony and such findings to the Court, and if the report of such master shall suggest a decree that the plaintiffs or any of them are entitled to an account against the defendants or any of them, and the same be confirmed by the court, then the case shall be referred again to the master, to state such an account and report thereon to the court."

And "It is distinctly understood that in the conduct of the cause, the master will be governed by the decision of Judge Acheson on certificate of examiner. Opinion filed October 15th, 1894."

The decision, referred to, is of questions certified to the Court

by H. B. Gamble, Commissioner, at the request of counsel, as set forth in pages one to eight of the testimony herewith returned, viz.: 1st. As to the right of the plaintiffs to have John S. Duss, one of the defendants, sworn and examined by the plaintiffs, as if on cross-examination; and 2nd. As to the objection of the defendants that the plaintiffs must first establish their proprietary rights in the assets of the society and their right to an interlocutory decree for an account before investigating any other matters alleged in the bill.

The opinion of the Court, referred to in the agreement, and deciding these questions, is as follows, viz.:

"1. Whether or not the witness, John S. Duss, is to be regarded 'as if under cross-examination,' or as called generally, by the plaintiffs, it is not necessary now to decide. The effect to be given to his testimony will be determined hereafter. As he is manifestly adverse to the parties who have put him upon the stand, they may interrogate him as a hostile witness."

"2. Under the pleadings it would, strictly speaking, be more regular for the plaintiffs in the first instance to show their proprietary interest in the estate and assets which are the subject matter of the bill, and their right to an accounting or to other relief based on ownership. But this Court will not prescribe the rigid observance of that order of proof. Some discretionary latitude should be accorded the plaintiffs' counsel as to the order in which the evidence shall be produced. They are, therefore, at liberty at this time to examine the witness as to the alleged dissolution of the Harmony Society, either by the common consent of its members, or by the abandonment of the purposes for which it was founded; and also to show by him the plaintiffs' proprietary interest and right to an accounting prayed for.

"But with the alleged breaches of trust by Duss as trustee of the Harmony Society or with his alleged personal misconduct the plaintiffs have no concern, unless they really have a proprietary title. It would, therefore, be premature and might be a sheer waste of time to take testimony in relation to those matters until the plaintiffs have made out a *prima facie* case of ownership. When they shall have produced evidence tending to show their right to an account they will be permitted to examine Duss without restriction. In the meantime his examination should be confined within the limits above indicated."

Under this appointment there are but two principal questions at present submitted to the master, viz.:

First. Have the plaintiffs, or any of them, such a proprietary

right or interest in the property and assets of the Harmony Society as entitled them upon the dissolution of the society to any part of or share in such property or assets or as entitles them to the account prayed for in the bill?

Second. Has the Harmony Society been dissolved by the common consent of the members or by an abandonment of the purposes for which it was formed?

As these questions raise entirely separate and distinct issues, both of law and fact, the determination of which requires the consideration of different lines of evidence and questions of law, the masters believes that it will be more satisfactory and convenient to consider each question entirely separate from the other, and will, therefore, so state his findings of fact and law.

On the first question, viz.: as to the rights and interest of the plaintiffs, the master finds the facts as follows, viz.:

In 1803 or 1804 one George Rapp and others came from the Kingdom of Wurtemberg to the United States, and with other immigrants settled at Harmony, in Butler County, Pennsylvania, where they formed a society or organization called or known as "The Harmony Society," and on February 15th, 1805, they entered into a written contract with each other, in German, a copy of the translation of which, not including the signatures, is attached to the answer of G. Riethmueller and others as Exhibit "A," and is as follows, viz.:

"Be it hereby known to all who need to know it that the following agreement has this day been made and concluded between us, the subscribers of the one part and George Rapp and his associates of the other part:

"ARTICLE 1. We, the subscribers, on our part and on the part of our heirs and descendants, deliver up, renounce and remit all our estate and property, consisting of cash, land and chattels or whatever it may be, to George Rapp and his associates, in Harmony, Butler County, Pennsylvania, as a free gift or donation, for the benefit and use of the community there, and bind ourselves on our part as well as on the part of our heirs and descendants, to make free renunciation thereof, and to leave the same at the disposal of the superintendents of the community, as if we never had nor possessed it.

"ARTICLE 2. We do pledge ourselves jointly and severally to submit to the laws and regulations of the community, and to show due and ready obedience toward those who are appointed and chosen by the community as superintendents in such a manner that not only we ourselves endeavor by the labor of our

hands to promote the good and interest of the community, but also to hold our children and families to do the same.

"ARTICLE 3. If, contrary to our expectation, the case should happen and we jointly or severally could not stand to it in the community, and we would within a few or more years break our promises and withdraw from the community for whatever cause it may be, never to demand any reward, either for ourselves or children or those belonging to us for any of our labor or services rendered, but whatever we jointly and severally shall or may do we will have all done as a voluntary service for our brethren.

"In consideration whereof George Rapp and his associates adopt the subscribers jointly and severally as members of the community, whereby each of them obtains the privilege to be present at each religious meeting; not only they themselves, but also their children and families shall and will receive the same necessary instructions in church and school which is needful and requisite for their temporal good and welfare as well as eternal felicity.

"ARTICLE 4. George Rapp and his associates promise to supply the subscribers jointly and severally with all the necessaries of life, as lodging, meat, drink and clothing, etc., and not only during their healthful days, but also when one or more of them become sick or otherwise unfit for labor, they shall have and enjoy the same support and maintenance as before; and if after a short or long period the father or mother of a family should die, or be otherwise departed from the community and leave a family behind, they shall not be left widows or orphans, but partake of the same rights and maintenance as long as they live or remain in the community, as well in sick as healthful days, the same as before or as circumstances or necessity may require.

"ARTICLE 5. And if the case should happen as stated above, that one or more of the subscribers after a short or a long period should break their promise and could or would not submit to the laws and regulations of the church or community, and for that or any other cause would leave Harmony, George Rapp and his associates promise to refund him or them the value of his or their property, brought in without interest, in one, two or three annual installments, as the sum may be, large or small; and if one or more of them were poor and brought nothing in the community, they shall, provided they depart openly and orderly, receive a donation in money, according to his or their conduct while a member or as he or their circumstances and necessities may require,

which George Rapp and his associates shall determine at his or their departure.

"In confirmation whereof both parties have signed their names.

"Done in Harmony, February 15th, 1805."

They became the owners of about seven thousand acres of land at Harmony, Butler County, which on May 6th, 1815, was conveyed by Frederick Rapp as their attorney in fact to Abraham Ziegler, for the consideration of $100,000. A certified copy of this deed is in evidence as "Exhibit No. 86." And in that year, or in 1814, the society removed from Butler County, Pennsylvania, to Posey County, State of Indiana, where, in 1821, a second agreement with each other in German was entered into by them. A copy of the translation of which, not including the signatures, is attached to the answer of Gottlieb Reithmueller, et al., as Exhibit "B"; and is as follows, viz.:

"Be it hereby known that to-day (20th January, 1821), in the year of our Lord one thousand eight hundred and twenty-one, the present agreement, treaty and alliance was made and concluded between us, the following persons, to wit: N. N. &c., of the one part and George Rapp and his association on the other part."

"After the aforesaid persons became sufficiently acquainted with the principles, rules and regulations of the community of George Rapp and his association, by virtue of their religious principles they have after long and mature reflection, out of their own free will, determined to join the community of said George Rapp and his association in Harmony, Butler County, State of Indiana; to that purpose the aforesaid persons, bind themselves and promise solemnly by these presents to comply with the ordinances, rules and regulations of the community, and render due obedience to the superintendents ordained by the community and to perform as much as possible all occupations and labors to which they are ordered, and help to promote the benefit, happiness and prosperity of the community. And if the case should happen that the aforesaid persons, jointly or singly, after a short or long period of time leave the community for any cause whatever, they hereby bind themselves jointly and each for himself separately never and in no case to bring any account nor make any claim, either against the association or any individual member thereof for their labor and services rendered; also never to make any demand, ask or claim any other payment, under any name and description whatsoever, but will do and have done all things out of Christian love for the good and benefit of the community, or else take it as

a gift if George Rapp and his association willingly give them something."

"However, George Rapp and his association in return adopt the aforesaid persons into their community, whereby they obtain prerogative to partake of all meetings for divine services, by which they receive in church and school the necessary instructions requisite and needful for their temporal benefit and happiness and eternal felicity. George Rapp and his association bind themselves further, to supply the aforesaid persons with all the wants and necessaries of life, to-wit: meat, drink and clothing, etc.; and, indeed, not only during their healthful days, but also if all or any of them get sick or otherwise infirm and unable to work, they shall as long as they remain members of the community receive and enjoy the same support as before during their better days, or as their circumstances may require.

"In confirmation of these presents we, both parties, have hereunto set our hands and seals.

"Done at Harmony the days and year above stated."

This agreement and that of 1805 remained in the possession of the society until a short time prior to the filing of the bill in this case, when they were lost; but the copies attached to the answer were considered by both defendants and plaintiffs as offered in evidence as correct copies of the agreements.

In 1825 the society removed from Indiana to Beaver County, Pennsylvania, where they purchased and settled upon a tract of land containing about 3,000 acres, now known as "Economy," where they have since remained, and which has since become very valuable, and on which they have erected many buildings, including dwellings and factories of various kinds, and made many valuable improvements.

In 1827 the agreement, written in both English and German, on pages one to eleven of Exhibit No. 18 in evidence, was entered into by the then members of the association. The English version of this agreement is as follows, viz.:

"WHEREAS, By the favor of Divine Providence, an association or community has been formed by George Rapp and many others upon the basis of Christian Fellowship, the principles of which being faithfully derived from the sacred Scriptures, include the government of the patriarchal age, united to the community of property adopted in the days of the apostles, and wherein the single object sought is to approximate, so far as human imperfection will allow, to the fulfillment of the will of God by the exercise of those affections and the practice of those virtues which

are essential to the happiness of man in time and throughout eternity:

"AND WHEREAS, It is necessary to the good order and well-being ing of said associations that the condition of membership should be clearly understood, and that the rights, and privileges and duties of every individual therein should be so defined as to prevent mistake or disappointment on the one hand, and contention or disagreement on the other;

"*Therefore*, Be it known to all whom it may concern: That we, the undersigned, citizens of Beaver County, in the Commonwealth of Pennsylvania, do severally and distinctly, each for himself, covenant, grant, and agree to and with the said George Rapp and his associates, as follows, to-wit:

"ARTICLE 1. We, the undersigned, for ourselves, our heirs, executors and administrators, do hereby give, grant, and forever convey to the said George Rapp and his associates, and their heirs and assigns, all our property, real, personal and mixed, whether it be lands and tenements, goods, and chattels, money or debts due to us, jointly or severally, in possession, or in remainder, or in revision, or in expectancy, whatsoever or wheresoever, without evasion, or qualification, or reserve, as a free gift or donation, for the benefit and use of the said association or community; and we do hereby bind ourselves, our heirs, executors and administrators to all such other acts as may be necessary to vest a perfect title to the same in the said association, and to place the said property at the full disposal of the superintendents of the said community without delay.

"ARTICLE 2. We do further covenant and agree to and with the said George Rapp and his associates, that we will severally submit faithfully to the laws and regulations of the said community, and will at all times manifest a cheerful and ready obedience toward those who are or may be appointed as superintendents thereof, holding ourselves bound to promote the interests and welfare of the said community, not only by the labor of our own hands, but also by that of our children, or families and others who now are or hereafter may be under our control.

"ARTICLE 3. If, contrary to our expectations, it should happen that we could not render the faithful obedience aforesaid, and should be induced, from that or any other cause to withdraw from the said association then and in such case we do expressly covenant and agree to and with the said George Rapp and his associates that we will never claim or demand, either for ourselves, our children or for any one belonging to us, directly or indirectly, any compensation, wages or reward whatever for our

or their labor or services rendered to the said community, or to any member thereof; but whatever we or our families jointly or severally shall or may do, all shall be held and considered as a voluntary service for our brethren.

"ARTICLE 4. In consideration of the premises, the said George Rapp and his associates do by these presents adopt the undersigned, jointly and severally, as members of the said community, whereby each of them obtains the privilege of being present at every religious meeting, and of receiving, not only for themselves but also for their children and families all such instructions in church and school as may be reasonably required, both for their temporal good and for their eternal felicity.

"ARTICLE 5. The said George Rapp and his associates further agree to supply the undersigned severally with all the necessaries of life, as clothing, meat, drink, lodging, &c., for themselves and their families; and this provision is not only limited to their days of health and strength, but when any of them shall become sick, infirm or otherwise unfit for labor, the same support and maintenance shall be allowed as before, together with such medicine, care and attendance and consolation as their situation may reasonably demand. And if at any time after they have become members of the association the father and mother of a family should die or be otherwise separated from the community, and shall leave their family behind, such family shall not be left orphans or destitute but shall partake of the same rights or maintenance as before, so long as they remain in the association, as well in sickness as in health, and to such extent as their circumstances may require.

"ARTICLE 6. And if it should so happen as above mentioned that any of the undersigned should violate his or her agreement, and would or could not submit to the laws and regulations of the church or community, and for that or any other reason should withdraw from the association, then the said George Rapp and his associates agree to refund to him or them the value of all such property as he or they may have brought into the community in compliance with the first article of this agreement, and the said value to be refunded without interest in one, two or three annual installments, as the said George Rapp and his associates shall determine. And if the person or persons so withdrawing themselves were poor, and brought nothing into the community, notwithstanding, if they depart openly and regularly, they shall receive a donation in money, according to the length of their stay and to their conduct and to such an amount as their neces-

sities may require in the judgment of the superintendents of the association.

"In witness whereof and in testimony that the undersigned have become members of the said community, upon the conditions aforesaid, they have hereunto severally and each for himself set their hands and seals, on the ninth day of March, in the year of our Lord, one thousand eight hundred and twenty-seven."

(Signatures).

This agreement, so written in English and German, was signed on March 9th, 1827, by 522 members of the association, whose signatures appear on pages 11 to 35 of Exhibit No. 18, attested by the signatures of John H. Hopkins and Charles L. Voltz, as having been signed in their presence; and afterwards, at various times from March 9th, 1827, until February 14th, 1836, was signed by 144 additional members, whose signatures appear on pages 35 to 43 of said Exhibit No. 18, all attested by Charles L. Voltz and John H. Hopkins as witnesses, as having been signed or acknowledged in their presence. A copy of this agreement is attached to the answer of G. Reithmueller *et al* as Exhibit "C."

In 1832, dissensions having arisen in the society, a large number of the members withdrew from the society, under the leadership of one Count De Leon. And on March 6th, 1832, a written agreement, under seal (Exhibit No. 82, offered in evidence by the defendants. See page 2786 of typewritten testimony) was entered into between George Rapp and his associates (viz., those who remained in the society) of the first part, and the withdrawing members of the other part, whereby the withdrawing members, in consideration of the sum of one hundred and five thousand dollars paid, or to be paid, to one of their number in trust for them, and of a present of sixty thousand francs to two women —apparently in France—"do jointly and severally withdraw from the Harmonie Society as established at Economy aforesaid, and will from this date cease to be members thereof, and they do jointly and severally, for themselves and for all claiming through or under them, grant, remise, release and quit-claim unto George Rapp and his associates, parties of the first part, all their right, title, interest and claim in law or equity, in and to all the estate, real and personal and mixed, belonging to the society of George Rapp and his associates, or vested in any person or persons in trust for them. They further release unto the parties of the first part all claims or demands on account of deposits of money and property made in said Harmonie Society by each and every one of them and by their ancestors or relatives, and they severally re-

lease to the parties of the first part and to each of them all actions and causes of action whatever, now or hereafter existing."

This agreement was signed by George Rapp and 181 others as parties of the first part, and 176 persons as withdrawing members, as parties of the second part.

In 1836 another agreement, under seal, written in English and German and dated October 31st, 1836, was executed by 391 members of the society, *revoking and annulling* the sixth article of the agreement of March 9th, 1827, which had provided for the refunding to withdrawing members the value without interest of the property or money contributed by them to the society, and confirming and continuing the remainder of that agreement. This agreement, with the signatures thereto attested by Charles L. Voltz and Wm. P. Baum, contained on pages 44 to 66 of Exhibit 18 in evidence, was afterwards accepted and adopted by thirty-three others, whose acceptances with their signatures are contained on pages 67 to 69 of said Exhibit No. 18. A copy of this agreement is attached to the answer of G. Riethmueller *et al*, as Exhibit "D."

The English version of this agreement, not including the signatures, is as follows, viz.:

"WHEREAS, The Harmony Society, consisting of George Rapp and many others, now established in the town of Economy, in Beaver County, Pennsylvania, did, on the 9th of March, 1827, enter into certain articles of association, of which the 6th in number is as follows, viz.:

" 'And if it would so happen as above mentioned, that any of the undersigned should violate his or their agreement, and would or could not submit to the laws and regulations of the church or community, and for that or any other cause should withdraw from the association, that the said George Rapp and his associates agree to refund to him or them the value of all such property as he or they may have brought into the community, in compliance with the first article of this agreement, the said value to be refunded without interest, in one, two or three annual installments, as the said George Rapp and his associates shall determine.

" 'And if any person or persons so withdrawing themselves were poor, and brought nothing into the community, yet if they depart openly and regularly they shall receive a donation in money, according to the length of their stay and to their conduct, and to such amount as their necessities may require, in the judgment of the superintendents of the association.'

"AND WHEREAS, The provisions of the said 6th article, though assented to at the time, manifestly depart from the great

principle of a community of goods and may tend to foster and perpetuate a feeling of inequality at variance with the true spirit and objects of the association;

"AND WHEREAS, The principle of restoration of property, besides its pernicious tendency, is one which cannot now be enforced with uniformity and fairness, inasmuch as the members of the association in the year 1816, under a solemn conviction of the truth of what is above recited, did destroy all record and memorial of the respective contributions up to that time;

"AND WHEREAS, Continued happiness and prosperity of the association, a more intimate knowledge of each other, have removed from the minds of all members the least apprehension of injustice and bad faith;

"NOW THEREFORE, Be it known by these presents that the undersigned, with a view to carry out fully the great principles of our union, and in consideration of the benefits to be derived therefrom, do hereby solemnly enter into covenants, and agree with each other as follows:

"1st. The said 6th article is entirely annulled and made void, as if it had never existed; all others remain in full force as heretofore.

"2nd. All the property of the society, real, personal and mixed, in law or equity, and howsoever contributed or acquired, shall be deemed now and forever joint and indivisible stock. Each individual is to be considered to have finally and irrevocably parted with all his former contributions, whether in land, goods, money or labor; and the same rule shall apply to all future contributions whatever they may be.

"3rd. Should any individual withdraw from the society, or depart this life, neither he in the one case nor his representatives in the other shall be entitled to demand an account of said contributions, whether in land, goods, money or labor, or to claim anything from the society as matter of right. But it shall be left altogether to the discretion of the superintendent to decide whether any, and if any what allowance shall be made to such member or his representatives as a donation.

"Invoking the blessing of God on this sacrifice of all narrow and selfish feelings to the true purposes of the association and to the advancement of our own permanent prosperity and happiness, we have signed the foregoing instrument, and affixed thereunto our respective seals, at Economy this 31st day of October, 1836."

(Signatures.)

Prior to his death in 1834, Frederick Rapp, a member of the society, had been the business agent of the society, transacting its external business. After his death the members of the society on July 5th, 1834, executed a power of attorney to George Rapp —Exhibit No. 85 in exidence—constituting him general agent of the society in all its temporal affairs, with power to appoint agents and substitutes under him. Under this power, he on the same day appointed Romulus L. Baker and Jacob Henrici his substitutes. This power of attorney was signed by four hundred and two members of the association, and with the substitution and not including the signatures, is as follows:

"Know all men by these presents: WHEREAS, Frederick Rapp, of Economy, in Beaver County, State of Pennsylvania, recently deceased, was for a series of years the agent in temporal affairs of the Harmonie Society, carrying on in his own name all the external business of said society and taking to himself the titles to real estate as well as the evidence of claims arising out of the various transactions of said society;

"AND WHEREAS, By an instrument dated the 20th of July, 1825, under the hand and seal of said Frederick, he solemnly and irrevocably declared that all the property, real, personal and mixed, which then was or hereafter might be in his possession or enjoyment, or the title to which he then held or might hereafter hold, was and should be considered the property of the said society, in which he the said Frederick had no absolute interest whatsoever;

"AND WHEREAS, The lamented death of the said Frederick Rapp renders it indispensable that a new agent should be appointed, by whom the temporal affairs of the society may continue to be managed in a mode which has proved convenient and satisfactory;

"NOW, THEREFORE, Be it known,that we the undersigned, constituting said Harmonie Society, do hereby nominate and appoint George Rapp, of Economy, in the County of Beaver, the general agent of said society in all its temporal affairs.

"The powers intended to be conferred on the said George Rapp are hereby declared to be as follows, that is to say:

"1. To ask for, demand and receive from each and every bank or other incorporated company, partnership, or individual person or persons, the amount which may be due therefrom, in the way of principal, interest or dividend to the said Harmonie Society, or to Frederick Rapp, whether the same be evidenced by judgment, mortgage, bond, certificate of stock, note, bill of exchange, deposit of money, book account, verbal promise, sale or barter, loan or money, or a rise in any other manner whatsoever,

the check, order, receipt, acquittance or release of the said George Rapp to be as effectual as if executed by all and each of us, or as if it had been executed by the said Frederick Rapp in his life time.

"2. To execute and receive all deeds and conveyances, in fee simple or otherwise, on behalf of the society, whether the title thereto stand in the name of the society or of Frederick Rapp or of George Rapp and associates. The act of the said George Rapp relative thereto to be as valid and sufficient as if executed by us or by the said Frederick Rapp in his life time.

"3. To carry on, by himself or through the agents whom he is hereinafter authorized to appoint, all the dealings and traffic of said society of every description.

"4. To constitute and appoint an agent or agents under him as he may deem advisable, imparting to such substitute or substitutes should he think fit the whole or any portion of the authority hereby conferred on himself. He may also at his pleasure revoke such instrument of substitution whenever he may think such revocation called for by the interests of the society.

"5. It is distinctly understood that in accepting and acting under this power the said George Rapp disclaims all personal interest other than that of a member of said society in the present resources or future earnings of the society, in conformity with the principles and terms upon which the Harmony Society was originally founded, as fully and effectually as was done by the late Frederick Rapp in the instrument already averted to, dated 20th July, 1825, the terms of which instrument the said George Rapp hereby adopts for himself and repeats in every particular.

"In witness whereof the undersigned members of the Harmonie Society who constitute said society, have hereunto set their hands and seals at Economy, in Beaver County, this fifth day of July, in the year of our Lord, eighteen hundred and thirty-four."

(Signatures.)

(Acknowledgment.)

"By virtue of the authority expressed in the fourth article of the foregoing power of attorney, I do appoint and substitute in my place and stead, Romulus L. Baker and Jacob Henrici, of Economy, Beaver County, Pennsylvania, to act as general agents of the Harmonie Society aforesaid, jointly or severally in my name, and for the use of the said society to do and perform all acts and things which as the general agent of said society I am authorized to do. It being distinctly understood, however, that in accepting and performing the office and business of general agents of the said society, the said R. L. Baker and Jacob Henrici shall neither acquire nor claim any personal interest in the present resources or future

earnings of the said society other than that of a member of the said society, agreeably to the plans and terms of association, but shall be considered as exercising the same trust mentioned in a declaration of trust signed by Frederick Rapp on the 20th day of July, 1825, and referred to in the foregoing power of attorney to George Rapp.

"Witness my hand and seal this fifth day of July, A. D. eighteen hundred and thirty-four.

"GEORGE RAPP." [SEAL]

"Signed, sealed and delivered
in presence of
"WM. ALLISON,
"JOHN NEELY."

(Acknowledgment.)

George Rapp the founder of the society, continued until his death in 1847, to be its head or superintendent and to rule and govern it. After his death another agreement, under seal, dated August 12, 1847, was executed in duplicate by the members of the society; one, in both English and German, with its signatures, is contained on pages 74 to 98 of Exhibit No. 18 in evidence and the other, in English, signed and duly acknowledged by the same persons—being Exhibit No. 83—which was recorded in Beaver County, in Deed Book 8, page 121. This agreement was signed by two hundred and eighty-eight members of the society. This agreement (a copy of which is attached to the answer of G. Riethmueller *et al.*, Exhibit "E")—not including the signatures—is as follows, viz.:

"WHEREAS, By the decree of God, the venerable patriarch and much-beloved founder and leader of the Harmony Society, George Rapp, has departed this life, whereby its members are deprived of his Christian fellowship and religious ministry, and of his superintendence in their temporal affairs; and, whereas in consequence of this deeply afflicting dispensation it has become necessary to the good order and well-being of the association that some plan should be agreed upon to regulate its future affairs, promote its general welfare and preserve and maintain it upon its original basis;

"THEREFORE, Be it known to all whom it may concern, that we, the undersigned, surviving and remaining members of the Harmony Society, and constituting the same, do severally and distinctly, each for himself, covenant, grant and agree to and with all the others thereof, and with those who shall hereafter become members as follows: That is to say,

"ARTICLE 1ST. We do hereby solemnly recognize, re-establish and continue the articles of our association (the sixth section ex-

cepted), entered into at Economy on the 9th day of March, A. D. 1827, in the presence of John H. Hopkins and Charles L. Voltz, and the supplement thereto, adopted at the same place on the 31st day of October, A. D. 1836, in the presence of Charles L. Voltz and William P. Baum, except so far as the same are affected by the death of the said George Rapp, or hereinafter altered or modified, and to this extent we declare the said articles to remain in full force.

"ARTICLE 2ND. We hereby ordain and establish a Board of Elders, which shall consist of nine members of the Harmony Society and their successors, to be chosen as hereinafter provided: John Stahl, John Schnabel, Adam Nachtrieb, Matthew Scholle, Joseph Hoerule, John Eberle, Romulus L. Baker, Jacob Henrici, Johnathan Lenz shall be the first Board.

"ARTICLE 3RD. The Board of Elders shall have and exercise the following powers, to-wit: 1st. To regulate and manage exclusively the internal temporal concerns of the Harmony Society; to appoint and remove superintendents in the several departments of industry; to make regulations and give orders in relation to their business operations, and generally to take care that the members perform the duties assigned to them. 2nd. To determine all disputes and misunderstandings amongst the members of the society; to advise, and if necessary, reprove any member who may be in fault or found delinquent in his duty. 3rd. To admit new members into the society and to expel them therefrom. New members when admitted shall subscribe to this agreement as the evidence of their membership, and of the rights acquired by, and the duties imposed upon them. 4th. To establish regulations for the maintenance and improvement of the morals of the society and for the instruction of its members. 5th. To appoint one or more of its members spiritual leaders and instructors, with such authority in relation to church discipline as shall be conferred by the Board. 6th. To remove from the Board of Elders and to declare his seat vacated, also to remove from office either or both of the trustees hereinafter appointed for the management of the external affairs and their successors in office. 7th. To fill all vacancies in the Board of Elders occasioned by the death, resignation or removal from office of any of its members and their successors, and so as often as a vacancy shall occur, to fill all vacancies in the office of trustee, when either or both of the trustees or their successors shall die, resign his office or be removed from the same, and so often as a vacancy shall occur. 8th. The concurrence of six members of the Board of Elders shall be deemed the act of the Board, and a legal exercise of any of the powers hereinbefore conferred on the said Board. 9th. A record book shall be kept in which the Board of

Elders shall enter all proceedings that they shall consider of sufficient importance to be preserved. In all controversies, judicial or otherwise, in which the society or any of its members may be a party, such record shall be full and absolute evidence of the facts and proceedings therein contained, and the affirmation of any elder shall be competent evidence of the identity of the said record.

"ARTICLE 4TH. We do further ordain and establish a Board of Trustees for the exclusive management of the external business and affairs of the society, which Board shall consist of two persons who shall be members of the Board of Elders, and their successors who shall be appointed as hereinafter provided. Romulus L. Baker and Jacob Henrici shall be the first Board of Trustees.

"ARTICLE 5TH. The said trustees shall jointly and severally have and exercise the powers following, to-wit: 1st. In their own names or that of either of them, or otherwise, to purchase and sell, deal, barter, exchange and traffic, make all contracts and bargains in the prosecution of the business, to invest the funds in stocks and other securities, and make transfers and assignments, to collect debts receive and pay out moneys, settle claims, compromise disputes, institute legal proceedings, appoint and dismiss agents, clerks and attorneys in fact and at law, and generally to transact all the external business affairs of the society. 2nd. To make donations to seceding and excluded members, and to the representatives of those who are deceased, and for such benevolent and charitable purposes as they may deem prudent and fit. 3rd. The said trustees shall have power jointly to purchase real estate in their own names and also in their joint names, to grant, bargain, sell and convey all or any of the lands and tenements now or hereafter owned by or belonging to the said society, and for this purpose to execute deeds of conveyance in fee simple or otherwise in their joint names, but the proceeds of all such sales shall be held in trust for the society. 4th. For the purpose of providing an effectual and convenient remedy in law for all injuries to the property of the said society, real and personal, by trespass, ouster, detention, conversion or otherwise, the said trustees are hereby invested with the rights of possession, entry and action in their own names as fully and to all intents and purposes as do and may exist in the said society, and to effectuate this object more completely and in consideration thereof, we grant and transfer to the said trustees all such title and interest in the said property as shall be necessary therefor. The proceeds of all suits to be brought shall be in trust for the society. 5th. The powers hereby vested in the said trustees shall extend to and embrace all the property of said society, real, personal or mixed,

whether standing or held in the name of the late Frederick Rapp, the said George Rapp, or in any other name or form whatsoever.

"ARTICLE 6TH. It is hereby distinctly and absolutely declared and provided that all the property, real, personal and mixed, which now or hereafter shall be held or acquired by any trustee or trustees or person under them, is and shall be deemed the common property of said society, and each trustee now or hereafter appointed, hereby disclaims all personal interest in the present resources and future earnings of the society, other than that of a member thereof, according to the articles of association hereby re-established and continued, and according to the present agreement.

"IN WITNESS WHEREOF, We, the undersigned members of the Harmony Society who constitute the said association, have to these articles, executed in English and in German, hereunto set our hands and seals at Economy, in Beaver County, this 12th day of August, A. D., 1847.

(Signatures.)

(Certificate of Acknowledgment.)

"Read over to and signed and sealed by the several persons whose names are subscribed in the presence of us.

"W. P. BAUM,
"FRANCIS LE GOULLON,
"ANDREW BIMBER."

The agreements of 1805, 1821, 1827, 1836 and 1847 are the only agreements or contracts made between the members of the society prior to 1890, and are the only ones that are material to the question of the property rights of the plaintiffs. Those of 1827, 1836 and 1847 are called by the witnesses, and are the constitutions of the society, and were signed by all the members at or about the time of their date, by those who were then members, and by those who afterwards became members at the time of their admission to the society.

These are the agreements and documents under which or some of which the plaintiffs claim the right to share in the property and assets of the society as heirs of former members.

The plaintiffs are Christian Schwartz, Antony Koterba, David Strohaker, Allen Shale and G. L. Shale.

Christian Schwartz claims as sole heir of his father, Christopher —or Christoff—Schwartz; his mother, Barbara Schwartz; his brother, Joseph Schwartz, and his sisters, Katrina Schwartz, Fredericka Schwartz, Maria Schwartz and Louisa Schwartz, and in his own right as a former member.

Christopher Schwartz and Barbara, his wife, were born in Ger-

many, and came to Birmingham, now Pittsburgh, in 1817; and in 1828, or the beginning of 1827, went with their family to Economy, and were admitted to the society as members. They remained in the society as members until they died—Christopher on July 12th, 1858, and Barbara on April 11th, 1857. Christopher worked first on the farm, afterwards as carpenter and in the laundry, and was an active worker. Barbara worked at household duties, and in the summer in the fields and in winter spun flax. Christopher signed the agreements of March 9th, 1827 (Exhibit 18, page 35); of October 31st, 1836 (Exhibit 18, page 49), and of August 12, 1847 (Exhibit No. 13, page 90). His name also appears at the foot of the ninth page of the recorded copy of the same agreement (Exhibit No. 83), on the 8th page of the De Leon agreement (Exhibit No. 82) and on the 6th page of the power of attorney to George Rapp (Exhibit No. 85).

Barbara Schwartz signed the agreement of 1827 (Exhibit No. 18, page 35) and the agreement of 1847 (Exhibit No. 18, page 93). Her name also appears on the 11th page of the recorded copy of the same agreement (Exhibit No. 83) and on the 9th page of the power of attorney to George Rapp (Exhibit No. 85).

Katharina Schwartz, the oldest child of Christopher and Barbara Schwartz, was born in Germany, and was thirteen years old when she came to Economy with her parents. She was afterwards admitted to the society February 15th, 1833, and continued in it until her death, in August, 1888, intestate and unmarried. While she remained in the society she worked in the cotton mill. She signed the agreement of March 9th, 1827 (Exhibit No. 18, page 41), the agreemen. of October 31st, 1836 (Exhibit No. 18, page 65), and the agreement of 1847 (Exhibit No. 18, page 97). Her name appears on page 14 of the recorded copy of the same agreement (Exhibit No. 83), and on the 11th page of the power of attorney to George Rapp (Exhibit No. 85).

Fredericka Schwartz was born also in Germany and came with her parents to Economy. She was admitted as a member of the society on February 14th, 1835, and continued a member until her death, unmarried, intestate and without issue in 1857. She worked in the cotton factory. She signed the agreements of March 9th, 1827; of October 31st, 1836, and of August 12th, 1847 (Exhibit No. 18, pages 42, 65 and 96). Her name also appears on page 13 of the recorded copy of agreement of 1847 (Exhibit No. 83), and on the 11th page of the power of attorney to George Rapp (Exhibit No. 85). She was never married.

Maria, or Mary Schwartz was born in Birmingham—now Pittsburgh—and came to Economy with her parents; was afterwards,

on February 15th, 1833, admitted to the society, and continued a member until her death, intestate and without issue, in 1878. She worked about thirty years in the cotton mill. She signed the agreement of 1836 (Exhibit No. 18, page 67), and the agreement of 1847 (Exhibit No. 18, page 97). Her name also appears on the 14th page of the recorded copy of the agreement of 1847 (Exhibit No. 83). She was never married.

Louisa Schwartz was born in Birmingham—now Pittsburgh—and came to Economy with her parents; was afterwards, on February 15th, 1844, admitted to the society, and continued a member until her death, intestate and without issue, on March 20th, 1889. She worked in the silk factory from the time she came to Economy. She signed the agreements of 1836 (Exhibit No. 18, page 69) and of 1847 (Exhibit No. 18, page 97). Her name also appears on the 14th page of the recorded copy of the agreement of 1847 (Exhibit No. 83). She was never married.

Joseph Schwartz, brother of Christian, plaintiff, was born in Birmingham—now Pittsburgh—and came to Economy with his parents, and was afterwards, on February 15th, 1847, admitted to the society, and remained in Economy as a member of the society until his death, intestate, unmarried and without issue, on June 25th, 1889. He worked in the woolen factory. He signed the agreements of 1836 (Exhibit No. 18, page 73) and of 1847 (Exhibit No. 18, page 81). His name also appears on the 10th page of the recorded copy of the agreement of 1847 (Exhibit No. 83).

Joel Schwartz, youngest of the family, was born in Economy, remained there about twenty years, but never became a member of the society, and died intestate, unmarried and without issue in 1858.

All these several parties, in addition to their work in the cotton, wool and silk factories, worked on the farm during the harvest time.

Christian Schwartz, one of the plaintiffs, was born in Birmingham—now Pittsburgh, and came to Economy with his parents when about three years of age, and remained there about twenty years, until April, 1846, when he left Economy to get married. During this time he worked in the woolen factory about seven years, and also on the farm and in the blacksmith shop. When he left Economy he received ten dollars from Mr. Baker, a member of the society, and afterwards received thirty-five dollars more from the society, and was fed and clothed during all the time he was at Economy.

Christian Schwartz testified (page 103, type-written testimony) that he never became a member of the society; and this is confirmed by the testimony of Fredericka Muntz, a member admitted November 7th, 1841 (Exhibit No. 18, page 70), who states (pages 2106,

2107, type-written testimony) that he never joined the society When recalled by the defendants he (on page 2427, etc., type-written testimony) states that the only persons he claims through are his father and mother, four sisters and his brother Joseph, but says he joined the society on February 15th, 1845, which he explains by saying that he reported to Father Rapp, before the 15th of February, that he wanted to be admitted; that on the 15th, which was the day on which members were admitted, he was sick and could not attend, but that Father Rapp sent to him in the night to take the Lord's Supper—and sent it to him at the house, because he couldn't go—which only members received at that time; that Father Rapp treated him as a member, but he did not sign any papers. He left Economy in April, 1846, and never returned, except as a visitor. A reference to Exhibit No. 18, which contains the agreements of 1827, 1836 and 1847, which all members were required to sign upon their admission, shows that he never signed them, and that no members were admitted in February of 1845 or February, 1846. The master, therefore, finds as fact that if it was the intention of the society, or of Father Rapp as the head, to admit him, his admission had never been completed by his signing the agreements of membership, and that he never became a member of the society.

It is alleged in the bill that these decedents, in addition to giving to the society large sums of money at the time of joining it, contributed very largely to its growth by their labor. The answer denies that they contributed cash or other property of any consequence to the society. There is no evidence that Christopher Schwartz, or Barbara Schwartz, his wife, or any of their children, gave or contributed any money or other property to the society upon their admission, or at any other time. Nor is it shown that they had any money or property to give. The master finds that none of them ever gave or contributed anything to the society except their labor, for which they received their support and maintenance until their death, in accordance with the agreements which they had signed. And that Christian Schwartz is their heir and entitled to inherit their estates.

Antony Koterba, the second plaintiff, never was a member of the Harmony Society, but claims as one of the heirs of his father, Joseph Koterba, and of his half-brother, Andrew Koterba, or Andreas Goterwa—being different ways of spelling the same name. (See testimony of Antony Koterba, page 2314 of type-written notes of testimony.)

It is averred in the bill and not denied in the answers, that Joseph Koterba, the father of the plaintiff, Antony Koterba, was one of the founders of the Harmony Society, having come from

Germany with Father Rapp and assisted in the organization of the society in Butler County in 1805. Two years later, Andrew Koterba, the half-brother of the plaintiff, Antony, was born in the society and remained therein seventy-three years, until his death in 1860, intestate, unmarried and without issue, and leaving, as his heir the plaintiff, Antony Koterba.

And on June 14th, 1895, the following admission by both parties was made at the hearing before the master (see page 1031 of the type-written notes of testimony), viz.:

"It is admitted by counsel for respective parties that the witness on the stand (Antony Koterba), one of the plaintiffs, is a half-brother of Andreas Goterwa, and a son of Joseph Koterba, and is entitled under the intestate laws of Pennsylvania to inherit in whole or in part the estate of the said Andreas Goterwa, or that of Joseph Koterba, the said Andreas Goterwa and Joseph Koterba being members of the society and signatories of the constitution of 1827, and the name of Andreas Goterwa appearing to the agreement or constitution of 1836, and also to that of 1847; this admission being made without prejudice to the defense as to any right of said witness to share in the fund of the Harmony Society."

Antony Koterba also testified (pages 1031 and 1036 of type-written notes of testimony) that his father, Joseph Koterba, withdrew from the society on November 13th, 1827, and died in Mahoning County, Ohio, on February 27th, 1860; that his half-brother Andreas Goterwa, died at Economy, unmarried and intestate, on May 25th, 1880, and that Andreas superintended the blacksmith-shop in Economy and was constable there for thirty or forty years. He also, in his later examination (page 2313 of type-written notes of testimony) identified the signatures of Andreas Goterwa to the agreements of 1836 and 1847, on pages 53 and 89 of Exhibit No. 18.

It is not alleged in the bill nor is there any evidence that either Joseph Koterba or Andreas Goterwa ever contributed or gave to the Harmony Society any money or other property.

The master therefore finds that Joseph Koterba assisted in the organization of the society in 1805; that he signed the constitution or agreement of March 9th, 1827, and withdrew from the society on November 13th, 1827, went to Ohio and lived there until he died on February 27th, 1860; that Andreas Goterwa was born in the society in 1807, signed the agreements of March 9th, 1827, October 31st, 1836, and August 12th, 1847, and continued a member of the society until he died at Economy on May 25th,

1880—intestate and unmarried; that neither Joseph Koterba nor Andreas Goterwa ever gave or contributed any money or other property to the Harmony Society; and that the plaintiff, Antony Koterba, is an heir of said Joseph and Andreas.

David Strohaker, the third plaintiff, was born and has always lived in Columbiana County, Ohio; was sixty-seven years of age in 1895 and was never a member of the Harmony Society. He claims as an heir of his parents, Christopher Strohaker and Mary (or Maria) Strohaker—formerly Rief—and his grandparents, both paternal and maternal.

It is averred in the bill and not denied in the answer that the paternal and maternal grandparents of David Strohaker joined the Harmony Society in 1805, and continued members until their death, and died intestate; that his father, Christopher Strohaker, was a member of the society and continued such until his marriage with Mary Rief, when he left the society. It is also averred that Mary Rief was a member of the society; but this is denied in the answer and there is no evidence to support the averment, and her name does not appear as a signer of any of the agreements or papers in evidence.

Christopher Strohaker, the father of the plaintiff, withdrew from the society in 1827, and with his wife, Mary, went to Columbiana County, Ohio, where they died intestate, Christopher in 1867 and Maria in 1875, leaving four children, viz.: Jacob, Jonathan, Tersia and David, the plaintiff, who are all now living in Ohio. Christopher Strohaker and his wife never returned to the society except to visit.

Christopher, the father of the plaintiff, was the son of Christian Strohaker and his wife. The plaintiff, when on the witness stand did not remember and could not give either the maiden or given name of his grandmother Strohaker. (See notes of testimony, page 2321.) Both Christian Strohaker and his wife died in Indiana, between 1820 and 1825, leaving four children, viz.: Jacob, Catharina, Magdalena and Christopher. All these four were members of the society, their names appearing as signers of the agreement of March 9th, 1827, Exhibit No. 18, pages 18 and 24. As stated above, Christopher withdrew from the society in 1827. Jacob and Magdalena withdrew from the society in 1832, and went with Count De Leon, their names appearing as signers on pages 10 and 12 of Exhibit No. 82, of the agreement of separation among those withdrawing from the society. Catharina remained in the society, and signed the agreements of October 31st, 1836, and August 12th, 1847 (Exhibit 18, pages

58 and 96). She also signed the recorded copy of the agreement of 1847 (Exhibit No. 83, page 13). The plaintiff does not claim through Jacob and Magdalena Strohaker, who withdrew from the society and went with Count De Leon, as stated by his counsel on page 2329 of the notes of testimony.

Mary Strohaker—formerly Rief—wife of Christopher and mother of the plaintiff, was the only child of Matthias Rief and his wife, whose name the plaintiff stated in his testimony to have been Agnes (notes of testimony, page 2322). Matthias Rief died in Indiana between 1820 and 1825, and his wife died in Economy about 1836. The names of Matthias Rief and Maria his wife, Agnes Rief, Christian Strohaker and Christopher Strohaker are recited in the deed of Frederick Rapp to Abraham Ziegler, dated May 16th, 1815 (offered in evidence as Exhibit No. 86 by the defendants for the purpose of helping to show who the members of the Harmony Society were) as among the associates of George Rapp who signed the power of attorney to Frederick Rapp, authorizing him to execute said deed.

It is averred in the bill that the parents and grandparents of the plaintiff contributed many thousand dollars to the society. This is denied in the answer, and there is no sufficient evidence to show that any of the ancestors or persons through whom the plaintiff, David Strohaker, claims ever contributed any money or other property to the society. The only evidence offered is the testimony of David Strohaker, on pages 1044 to 1047 of the notes of testimony, that in 1837 or 1838, a Mr. Witzman and Romulus Baker came to his father's house to collect $300, which his father borrowed from the society, and that his mother had cried about it and said that she had to pay interest on her own money, "That she had to pay for her own money that they had put there in 1805 from their father's estate; that she had to pay interest on her own money;" and that Baker said, "If I could change it I would, but I haven't got the power." The amount was not mentioned. This does not amount to an admission on the part of the society that money had been contributed to it by any of the parties through whom the plaintiff claims.

The master, therefore, finds that Christian Strohaker and wife, and Matthias Rief and wife, the grandparents of the plaintiff David Strohaker, joined the society in 1805, and continued members until their deaths, as hereinbefore stated. That Christopher Strohaker, the father of said plaintiff, and Catharina Strohaker, his aunt, were members of the society and signed the agreement of March 9th, 1827; that Christopher Strohaker withdrew from the society in 1827, and never returned to it; that Catharina Stro-

haker signed the articles of October 31st, 1836 and of August 12th, 1847, and continued a member until she died in 1870. That the plaintiff is one of the heirs of the several parties, and entitled to a share of their estates. That none of the parties through whom the plaintiff claims ever contributed or gave any money or property to the society.

The other plaintiffs are *Allen Shale* and *G. L. Shale*, who claim as heirs of Jacob and Lawrence Scheel or Shale.

It is averred in the bill that Maria Scheel and her two sons, Jacob and Lawrence, came from Germany in 1804, and were among the first to join the Harmony Society; and that said Jacob and Lawrence Scheel assisted in building up the three towns of the society, and contributed largely, by their labors, to the founding and maintenance of the society.

The only part of this averment denied by the defendants is that Maria Sheel and her son Lawrence became members of the society. There is no evidence that Maria Scheel ever became a member of the society—except the testimony of Allen Shale, the plaintiff, whose only knowledge was by tradition in the family, or rather, as he stated in his cross-examination, type-written notes of testimony, pages 2339 and 2340, from the talk of his father, the grandson of Maria Scheel, and from the records in Butler County. His knowledge of Maria Scheel is very indefinite. He did not know when she died, nor where—stating (page 2338) that she died at New Harmony, Indiana, and (on page 2340) that she died at Harmony, Butler County, Pa. The name of Maria Scheel, or Shale, does not appear in any of the papers of the society, in evidence.

The names of both Jacob and Lawrence Scheel appear, as signers of the power of attorney of June 14th, 1814, to Frederick Rapp, as recited in his deed to Abraham Zeigler. Exhibit No. 86 offered in evidence by the defendants. And the name of Jacob Sheel also appears as a signer of the agreement of March 9th, 1827 (Exhibit 18, page 13), and as a signer of the agreement of separation of Count de Leon and his party (Exhibit No. 82, page 9) and of the power of attorney to George Rapp (Exhibit No. 85, page 6).

The master, therefore, finds that Jacob and Lawrence were members of the society, and that there is not sufficient evidence to show that Maria Scheel, their mother, ever became a member. And from the testimony of Allen Shale and other evidence, he also finds that Jacob Scheel signed the agreement of March 9th, 1827, and died unmarried, intestate and without issue in Economy about 1837; that Lawrence Scheel withdrew from the society in

1824 or 1826, and some three years afterwards married in Ohio, where he lived until he died in 1855, leaving five children, viz.: Andrew, Gustavus, Solomon, Lucinda and Gideon. Andrew married, and died December 12th, 1891, in Ohio, leaving three children, viz.: Allen, one of the plaintiffs, Richard and Isabel. Richard and Isabel are still living. The plaintiff, G. L. Shale, is one of the sons of Lawrence Scheel, and is at present living in South Dakota.

He also finds that the plaintiffs, G. L. Shale and Allen Shale, are two of the heirs-at-law of Lawrence Scheel and Jacob Scheel. And that neither the father or mother of Allen Shale, nor the plaintiffs, Allen and G. L. Shale, were ever members of the Harmony Society.

It is not averred in the bill, nor is there any evidence, that either Maria, Jacob or Lawrence Scheel ever contributed or gave to the society any money or property of any kind, or anything but their labor; and the master, therefore, finds that they never did contribute or give to the society any money or property of any kind.

It thus appears:

1st. That none of the plaintiffs were ever members of the society.

2d. That all of those members of the society through whom Christian Schwartz claims as their heir, signed the agreements of 1836 and 1874, and continued members until their death.

3rd. That Antony Koterba claims as heir of his father, Joseph Koterba, and his half-brother, Andreas Koterba, that Joseph Koterba joined in the organization of the society, and also signed the agreement of 1827, and afterwards, in 1827, withdrew from the society; and that Andreas Koterba signed the agreements of 1827, 1836 and 1847, and died a member of the society.

4th. That the grandparents of David Strohaker, viz., Christian Strohaker and wife, and Matthias Rief and wife, joined the society in 1805, and all remained members until their death—all dying between 1820 and 1825, except Mrs. Rief, who died between 1830 and 1836. That his father, Christopher Strohaker, signed the agreement of 1827, and withdrew from the society in 1827. That his aunt, Catharina Strohaker, signed the agreement of 1827, 1836 and 1847, and continued a member of the society until her death.

5th. That Lawrence Scheel and Jacob Scheel, ancestors of Allen and G. L. Shale, joined the society in 1805; that Lawrence

withdrew in 1824 or 1826; that Jacob Scheel signed the agreement of 1827 and died a member, about 1837.

6th. That none of the parties through whom the plaintiffs claim contributed any money or property to the society.

CONCLUSIONS OF LAW.

Upon these facts, as found, what are the rights and interests of these plaintiffs in the association or in its property upon its dissolution?

As they claim as heirs, they are bound by the agreements and contracts entered into or recognized by those through whom they claim—there being no charge or evidence that the execution of the agreements had been procured or induced by fraud or coercion.

The agreements of 1805 and 1827 are substantially the same in so far as they relate to the rights and duties of the members of the society. The agreement of 1836 modified these by taking away from withdrawing members the right to a return of the value of the property contributed by them. And the agreement of 1847 adopted a new plan of government of the society, which was made necessary by the death of George Rapp, until that time leader and ruler of the society.

On account of these changes in the agreements, the persons through whom the plaintiffs claim may be divided into three classes, viz.:

First. Those withdrawn from the society before the execution of the agreement of 1836.

Second. Those dying in the society before that time.

Third. Those who died members of the society after having joined in the agreements of 1836 and 1847.

The first class includes Joseph Koterba, the father of the plaintiff; Antony Koterba, Christopher Strohaker, father of David Strohaker, and Lawrence Scheel, the ancestor of plaintiffs G. L. and Allen Shale.

The second class includes Christian Strohaker and wife, and Matthias Rief and wife, the grandparents of plaintiff David Strohaker, and Jacob Scheel, uncle of G. L. Shale and granduncle of Allen Shale.

The third class includes Andreas Goterwa, half-brother of Antony Koterba, and Catharina Strohaker, aunt of David Strohaker, plaintiff and all of those through whom Christian Schwartz claims.

Of those included in the first class Lawrence Scheel withdrew in 1824 or 1826, and the others, viz.: Joseph Koterba and Christopher Strohaker, withdrew in 1827, after having signed the agreement of that year. As Lawrence Scheel was among the first

to join the society in 1805, and continued in it until 1824 or 1826, it must be presumed that he was bound by the terms of the agreement of organization of 1805, if not a party to it. Both the others signed the agreement of 1827. The first paragraphs of these two agreements are substantially the same although worded a little differently. In both, the parties to them make an absolute transfer of all their property to George Rapp for the use and benefit of the association. In the second paragraph in each, they agree to submit to the rules and regulations and to labor for the society. In the third article of each, they agree, in case of withdrawal from the society, to make no claim for the services of themselves or their families. In the fifth and sixth paragraphs of each agreement, in consideration of these stipulations, they are adopted as members of the society and promised instruction and maintenance and support for themselves and their families as long as they remain with the society. And in the last article of the agreement of 1805 and the sixth of that of 1827, it is agreed that in case of withdrawal for any cause from the society the value of the property contributed by them to the society should be refunded to them by the society, without interest. At this distance of time from the withdrawal of these parties, it must be presumed or assumed, that the agreements had been fully complied with, and that upon their withdrawal, they received from the society what they were entitled to under their agreement, viz.: the value of all the property they had brought into the society, and that during the continuance of their membership they had been maintained and supported by the society, as stipulated in both of said agreements; and, having agreed to make no claim for their labor, they had no longer any claim on, or interest in, the society. What claim could they have? They had received from the society the value of all the property they had brought into it, and for their labor they had received their support, maintenance and education, and had waived all claim for further payment. If they had no longer any claim against or interest in the society or its property, how could any pass to their heirs from them? And, therefore, the plaintiffs, so far as they claim as heirs of these withdrawing members, can have no rights or interest in the present property of the society; not as heirs of donors of property, because any given or its value, had been returned to the donors; nor as heirs of those contributing labor, because those who contributed the labor had received in their support full compensation for it, and had released all claims on account of it.

The second class of those through whom the plaintiffs claim are those who died members of the society, before the making of the

agreement of October 31st, 1836 ,viz.: Christian Strohaker and wife and Matthias Rief and wife and Jacob Scheel. These all joined the society in 1805 and remained in it until their death. Having joined the society in 1805, the year the first agreement was entered into, and having continued in it until their deaths some years after, and Jacob Scheel having signed the agreement of 1827, it must be presumed that they were parties to the agreement of 1805, their heirs claiming the benefit of it in alleging that they were members of the society.

It is claimed by the plaintiffs that there is no tontine or survivorship clause in the agreements of 1805 or 1827, and that, therefore, upon the death of those dying in membership of the society, their interest in the property of the society became vested in their heirs and not in the remaining members of the society.

The agreements of 1805 and 1827 were made in Pennsylvania and related to persons and property in Pennsylvania, and the present contest is in reference to property there, and therefore the decisions of its Courts on these agreements are entitled to great consideration in ascertaining the rights of parties under them.

These two agreements came up for consideration and construction before the Supreme Court of Pennsylvania in 1836 in the case of Schriber vs. Rapp, 5 Watts, 351. It was an action of account render, brought by Jacob Schriber, administrator of Peter Schriber deceased, against George Rapp *et al.*, doing business in company under the name of the Harmony Society. From the report the plaintiff appears to have been the son of Peter Schriber, the decedent. The facts as stated in the report were that Peter Schriber joined the society in 1806 and contributed to it some $8,000 in money. At that time he had a wife and eight or nine children, three of whom were in the society at the time of the trial of the case. On August 26th, 1826, he made a deed to George Rapp and his associates of all the property he had brought into the society or had afterwards contributed to it, and released, quit-claimed and discharged Rapp and his associates from all claims and demands against them. He died in 1833, being still a member of the society. It also appeared that he had signed the articles of association, which are quoted in full in the report. The lower court charged the jury, in part as follows, viz.:

"3. The article of association executed by the plaintiff's intestate are a complete bar to the plaintiff's recovery in this case, unless the plaintiff's intestate has had a fraud practiced upon him and been induced to sign them by fraud and imposition; if fraudulent, they would not bar." And "4. The deed and release are also a bar to the plaintiff's recovery, unless the intestate was

fraudulently imposed on, and the execution and delivery of them were procured by fraud and imposition." And "5. There is nothing in the articles of association given in evidence that renders the agreement unlawful or void; nothing in them inconsistent with constitutional rights, moral precepts or public policy."

These parts of the charge were assigned for error. The opinion of the Court by Gibson, C. J., is as follows:

"The points made at the argument are reducible to two, but one of which is attended with difficulty, for it is not susceptible of doubt that the articles and release, if fairly obtained, are conclusive of the right. An association for the purpose expressed is prohibited neither by statute nor the common law; and it is clear that, except for the amount of its income, this society would be entitled to a charter by our statutes of self-incorporation. It may be true that the business and pursuits of the present day are incompatible with the customs of the primitive Christians; but that is a matter for the consideration of those who propose to live in conformity with them. Our laws presume not to meddle with spiritualities, and religious societies are regarded by them with but an eye to their temporal consequences. It has not been pretended that this society is detrimental to the public or its neighbors. It is an ecclesiastical community, performing with alacrity its duties to the laws, rendering unto Cæsar the things that are Cæsar's, and fashioning its municipal rules of property and government after the models of those Christian societies that existed in the days of the apostles. Its most peculiar features are submission to the will of its founder, and equal participation of property brought into the common stock by individuals or produced by the labor of the whole. That it is not a partnership results from the fact that the profits are not shared in severalty.

"*At the period of initiation, the neophyte surrenders his worldly wealth to the society, reserving to himself but the contingent right of resumption in the event of his secession,* to which none but those who were creditors at the time could object, for all else would deal with him on the basis of a transfer already made. In the present instance it is not alleged that there were creditors; without which, as determined in Buchler *vs.* Gloninger, 2 Watts, 226, the administrator could not interfere. It is supposed, however, that as the intestate had power by the articles to secede from the society and take out of it whatever he had brought into it, the successor to his personal rights may exercise it as his representative. Such, however, are not the terms of the articles, nor would the posthumous exercise of the power consist with the disposition he thought fit to make by dying in fellowship. An exercise of it by

the administrator of one dead without kindred would wrest the property from the society only to give it to the State by escheat. The right of secession therefore, is intransmissible, and were it not, the intestate's release would be a bar. The question susceptible of argument, then, is whether there were such evidence of fraud at the execution of the papers as might be left with a jury."

The Court then discusses the evidence of fraud, and decides that it was insufficient, and that the plaintiff was not entitled to recover.

The case of Buchler *vs.* Gloninger, 2 Watts, 226, cited by the Court in the above opinion, only decided that a conveyance in fraud of creditors was good against the party himself and his heirs, executors or administrators, but was void as to creditors, and might be set aside by the administrator only when acting as trustee, representing the creditors. The syllabus given is as follows:

"The statute of 13 Elizabeth makes void a deed only against creditors, but not against the party himself, his executors or administrators; as against them it remained a good deed. If the action be against the administrators for goods in possession of their intestate at the time of his death, which the plaintiff alleges belong to him, it is competent for the defendants to show that the intestate was insolvent at the time of his death, and that they defend for creditors. The statute will then bar the plaintiff's recovery."

The decision is that the agreements being good against the decedent and his heirs and administrators, the administrator could only recover against the society by showing that there were creditors of the decedent who were defrauded by the agreements.

As the statement of the evidence in the case shows that there were children of Schriber then living, and that the administrator-plaintiff was also a son of Schriber, it is evident that the reference by the Court to an escheat to the State was merely to show what would be the effect of the plaintiff's recovery if there were no heirs, and not for the purpose of stating that Schriber had left no heirs, or deciding the case on that ground.

As the contract, in case of withdrawal of a member, as stated in the agreements of 1805 and 1827, is not to return the property contributed, whether real or personal, but "to refund to him or them the value of his or their property brought in, without interest," the administrator of a deceased member would be the proper party to bring suit for it for the heirs, if it belonged to the estate of the decedent. It was a claim for personal property belonging to the estate, for which only an executor or administrator would be entitled to sue, whether it finally went to creditors or heirs of the decedent. The decision of the court, therefore, was that the property contributed by the deceased member, and all interest he had in the

property of the society upon his death, vested in the society and not in his heirs or administrators. That, although there is no express tontine or survivorship clause in these agreements, that is the effect and intention of the agreements. In 26 Am. and Eng. Encyclopædia of Law, page 58, titled "Tontine Insurance," this is the construction put upon this decision.

If, then, the interests of Christian Strohaker and wife, and Matthias Rief and wife, and Jacob Scheel, whatever they might have been, passed upon their deaths, to the society by survivorship under these agreements, and not to their heirs; such heirs acquired no right or interest in the present property of the society through them.

Another objection to the recovery by the heirs of those persons of the first and second classes is that all rights of action, or for relief in equity that these parties or their heirs might have under the agreements of 1805 and 1827 against the society, accrued prior to 1836, more than sixty years ago. In Spiedel *vs.* Henrici, 120 U. S. R., 377, a bill filed against this same society in 1862, for causes occurring some fifty years before, was dismissed by the Supreme Court of the United States on the ground that the plaintiff had shown so little vigilance and so great laches that he was not entitled to relief in equity; and it was there held that a bill might be dismissed on that ground, although the objection was not raised by the pleadings.

The third class of persons through whom the plaintiffs claim, are those who died members of the society after the making of the agreement of 1836, and who all signed that agreement and that of 1847. These are Christopher and Barbara Schwartz and all their family (except Joel, who never became a member of the society), Andreas Goterwa and Catharina Strohaker.

The agreement of 1836, after reciting the sixth article of the agreement of March 9th, 1827, providing for the refunding to withdrawing members the value of all such property as they may have brought into the society, and the reasons inducing the making of the agreement, proceeds as follows, viz.:

"Now, therefore, be it known by these presents that we, the undersigned, with a view to carry out the great principles of our union, and in consideration of the common benefits to be derived therefrom, do hereby solemnly enter into, covenant and agree with each other as follows:

"1. The said sixth article is entirely annulled and made void as if it had never existed; all others to remain in full force as heretofore.

"2. All property of the society, real, personal or mixed, in law or equity, and howsoever contributed or acquired, shall be deemed

now and forever joint and indivisible stock; each individual is to be considered to have finally and irrevocably parted with all his former contributions, whether in land, goods, money or labor, and the same rule shall apply to all future contributions, whatever they may be.

"3. Should any individual withdraw from the society or depart this life, neither he in the one case, nor his representatives in the other, shall be entitled to demand an account of said contributions, whether in goods, land, money or labor, or to claim anything from the society as matter of right. But it shall be left altogether to the discretion of the superintendent to decide whether any, and if any, what allowance shall be made to such member or his representatives as a donation."

As already stated, this agreement was signed by all those through whom the plaintiffs claim who continued in the society after its adoption, and this includes all of those through whom the plaintiffs claim who are not included in the first two classes. And it clearly and unmistakably establishes the right of survivorship in the society, and is as clearly a grant to the society of all interest and right that each person signing it may have in the common property, to the entire exclusion of their heirs or personal representatives. It has been signed and adopted as a part of their contract with the society by all persons admitted to the society since it was made, in 1836.

This agreement came before this Court for consideration in Nachtrieb *vs.* Harmony Society, No. 28, November term, 1849, in equity, reported in 3 Wallace, Jr., 66, and was held valid and binding on the persons signing it. Nachtrieb, in his bill alleged that he had joined the society in 1819, and had been illegally and wrongfully expelled in 1846; and prayed for an account, and that he should be allowed his share of the property of the society. The case was heard before Judge Grier. The questions raised were whether he had been wrongfully expelled or had voluntarily withdrawn from the society, the evidence of withdrawal being the following paper, signed by Nachtrieb two days after the alleged expulsion, viz.:

"To-day I have withdrawn myself from the Harmony Society, and ceased to be a member thereof. I have also received from George Rapp two hundred dollars as a donation, agreeably to contract.

"JOSHUA NACHTRIEB."

"Harmony, 18th June, 1846."

And if wrongfully expelled, what relief was he entitled to under his bill.

Judge Grier, in an interlocutory opinion, filed in the case and

cited by the plaintiffs, after quoting the agreements, including that of 1836, as being signed by Nachtrieb, says, in commenting on the right of the society to expel a member:

"It will be admitted that for the peace, harmony and safety of the society, any member might have been punished even to expulsion, although no by-laws or written rules existed prescribing the offence; this surely would be far enough; but expulsion without a prescribed offence, written or oral, would be unjust to the expelled member, but would, if without remedy, in connection with other causes, some of frequent occurence, others inherent in such a community, irresistibly lead at no remote day to a dissolution of the society, and *consequently to a division of its immense possessions among such of the members as might happen to survive the operation of these causes.* Unless, however, nature should be proof against the strong temptation to hasten such a result the dissolving element would be always at work. The unwritten rules of the society, inconsistent with natural rights and liberties as seen beyond its owner's limits, the death of its members, the expulsion of others with or without cause, and the prohibition of marriage and the lawful intercoure of the married, would in time so reduce the community in number as to make it expedient and proper in the opinion of the survivors to dissolve and divide the possessions. It is not meant to infer that any such ulterior result is projected, or that in view of it, it in any way influenced the proceedings against the complainant; it is noticed simply for the purpose of glancing at *an indisputable and imputed right which will attach to each member of the community at its dissolution*; an event it may be near or remote, but which not unreasonably, such member may think may happen in his lifetime, and to value accordingly, with its disadvantages if any the privileges of membership."

Having reviewed the evidence in the case, the court decided that Nachtrieb had been unlawfully expelled; that the words "according to contract," in the paper signed by him, had reference to the agreement of 1836, but that the paper of June 18, 1846, taking away his rights, under the circumstances under which it was signed, was not conclusive on him, or such as equity would enforce, and the plaintiff was entitled to receive a share of the property of the society.

In his final opinion, reported in 3 Wallace, Jr., 81, the Court held that "Although, by the contract and agreement of the several members of this association, each had an equal right and interest in their common property, and *had estopped himself from even setting up any claim for property or labor contributed to the common stock in case of a voluntary withdrawal from the society,*" yet, as the society had unlawfully expelled the plaintiff, the contract between him

and the society was broken, and he was entitled to his equal share of the property, viz.: one three hundred and twenty-first part, there being then, including Nachtrieb, three hundred and twenty-one members, and that the paper of withdrawal had been obtained by undue influence, and was void. On appeal to the Supreme Court, reported in 19 Howard, 126, it was held that the instrument of June 18th, 1846, in connection with the agreement of 1836, was not merely a receipt, but a contract, and showed a voluntary withdrawal from the society; that the plaintiff's bill had not been properly framed to admit the evidence to show undue influence, fraud or imposition on the plaintiff, and such evidence could not be considered; that the contract was conclusive on the plaintiff, and that he was not entitled to the relief prayed for. Thus affirming that part of the opinion of the Circuit Court above quoted, viz.: that a member voluntarily withdrawing from the society was estopped by the agreement of 1836 from setting up any claim for money, property or labor contributed.

In Geosele *vs.* Bimeler, 5 McLean R., 223, affirmed in 14 Howard, 590, agreement of the Separatist Society of Zoar, containing provisions in reference to the property of the society and the labor of its members—similar to those of the agreements in this case —was held to be valid and binding on the members and their heirs, and that "all individual right of property became merged in the general right of the association. A member had no individual right, and could transmit none to his heirs." The same agreement came up for consideration before the Supreme Court of Ohio, in Gasely *et al. vs.* Separatist Society of Zoar, 13 Ohio State Reports, 144, and the same conclusions were arrived at.

In Burt *vs.* Oneida Community, 137, N. Y. R., 546, a similar agreement (which will be found in full in 41 New York State Reports, 48) was held by the Court of Appeals of New York, not to be "prohibited by any statute, or in contravention of any law regulating the possession, ownership or tenure of property," and that "it was a joint holding of property by the adult members of the community, with this qualification, that upon the death or withdrawal of a member, no share or interest therein passed to him or to his personal representatives, but they who survived or remained continued to hold jointly the entire property *insolidum*."

Waite *vs.* Morrill, 4 Marine R., 102, and Gass *vs.* Walhite, 2 Dana (Ky.), 170, and Grosvenor *vs.* United Society of Believers, 108 Mass., 78, are all cases arising on similar agreements and are to the same effect.

The plaintiffs, therefore, under their agreements, have no claim on the property of the society through any of their ancestors. Not

through those who withdrew before the execution of the agreement of October 31st, 1836, because those who withdrew had had returned to them the value of any property they might have contributed, and had received the compensation for their interest or part in the society or its property. Not through those who died in the society before 1836, because all their interest in the property had become vested in the society, and did not descend to their heirs. And not through those who died in, or withdrew from the society after the agreement of 1836, because they had by that agreement expressly renounced for themselves and their heirs all right to claim anything on their withdrawal or death. In all the cases cited above, the principle of survivorship in the remaining or surviving members was recognized as existing, and approved and enforced.

The plaintiffs, in the sixth paragraph of their bill, aver that the money and real estate from those who became members of the society were received and accepted by George Rapp and his successors in trust, and for the furtherance of the tenets and beliefs upon which the society was founded. This last clause is denied by the defendants in the sixth paragraph of their answer, but it is there admitted that all the goods and properties placed in the names of the agents and trustees of the society were and are held in trust for the Harmony Society, but always subject to the terms of the written contracts between the members of the said society. But in the twenty-sixth paragraph of the bill the plaintiffs deny that the property of the society has ever been impressed with a trust, as being contrary to public policy and void in law or equity.

It is difficult to determine from these contradictory averments of the plaintiffs what their position on the question is. There is no other evidence in the case to show how the property was or is held than the agreements of the members in evidence hereinbefore set forth, and the subsequent agreements of April 30th, 1890, and December, 1892, also in evidence—in which the former agreements are affirmed and continued—and the testimony of all the witnesses who testified on the subject, that all the property was held by the trustees in trust for the society as joint property.

The counsel for the plaintiffs however, claim in their argument, that the grants in the agreements of 1805 and 1827, if they were to the society were to an unincorporated association which was incapable of taking, and therefore void; that if George Rapp be considered a trustee they were still void, for the reason that a grant to a trustee of an unincorporated voluntary association is void, and that they violate the rule against perpetuities; and also for the further reason that the associates of George Rapp were not named and could not be ascertained.

The first article of the agreement of 1805 is as follows:

"We, the subscribers, on our part and on the part of our heirs and descendants, deliver up, renounce and remit all our estate and property, consisting of cash, land and chattels, or whatever it may be, to George Rapp and his associates in Harmony, Butler County, Pennsylvania, as a free gift or donation, for the benefit and use of the community there, and bind ourselves on our part, as well as on the part of our heirs and descendants, to make free renunciation thereof, and to leave the same at the disposal of the superintendents of the community as if we never had nor possessed it."

And the first paragraph of the agreement of 1827 is as follows:

"We, the undersigned, for ourselves, our heirs, executors and administrators, do hereby give, grant and forever convey to the said George Rapp and his associates, and their heirs and assigns, all our property, real, personal and mixed, whether it be lands and tenements, goods and chattels, money or debts due to us, jointly or severally, in possession, remainder, or in reversion or expectancy, whatsoever and wheresoever, without evasion, qualification or reserve, as a free gift or donation for the benefit and use of said association or community; and we do bind ourselves, our heirs, executors and administrators to do all such acts as may be necessary to vest a perfect title to the same in the said association, and to place the said property at the full disposal of the superintendents of said community without delay."

The objection that the associates of George Rapp were not named or known, is not good. He is named and known, and capable of taking and holding the title, either for himself or in trust.

The agreement itself shows that by "his associates" those who joined in the agreement were intended; and although through the loss of the agreement, their names are not now known, they were known at the time of its execution and for many years after.

Who the associates were, and that they were the persons who, by joining in the agreements, became associates of George Rapp and members of the society, is shown by Exhibit No. 86, being the deed from Frederick Rapp for himself as attorney in fact of George Rapp and his associates, to Abraham Zeigler of Lehigh County, for the lands of the society in Butler County. This deed was offered in evidence by the defendants, for the purpose of showing who the members of the society were, and as part of its history. (See testimony, pages 2622 and 2792). The parties to this deed are stated in it, as follows:

"This indenture, made the sixth day of May, in the year of our Lord, one thousand eight hundred and fifteen, between Frederick

Rapp of Harmony, County of Butler, and Commonwealth of Pennsylvania, for himself and as agent and attorney in fact for George Rapp and associates, of Harmony aforesaid, for the purpose specially constituted and appointed by letters of attorney bearing date on the fourteenth day of June, in the year of our Lord one thousand eight hundred and fourteen, duly signed, sealed and acknowledged by the said George Rapp and Christina his wife, Rosina Rapp, Johanna Rapp, John L. Baker, William Liller"—and four hundred and fourteen others, naming them—"*being the associates of the said George Rapp above mentioned*, of the first part, and Abraham Zeigler, of Lehigh County, in the Commonwealth aforesaid, of the second part, witnesseth," etc.

Among those named in this deed as associates of Rapp and signers of the power of attorney, appear the names of several of those persons through whom some of the plaintiffs claim.

The objection that these grants violate the rule as to perpetuities is also unfounded. A perpetuity is defined by Swayne, Justice, in Auld *vs.* Washington Hospital, 95, U. S. R., 312, as

"A limitation of property which renders it inalienable beyond the period allowed by law. That period is a life or lives in being and twenty-one years more, with a fraction of a year added for the term of gestation in posthumous births."

And in Perry on Trusts, Sec. 377, it is said:

"A perpetuity is a future limitation, whether executory or by way of remainder, and of either real or personal property, which is not to vest until after the expiration of, or will not vest within the period prescribed by law for the creation of future estates and interests, and which is not destructible by the persons for the time being entitled to the property subject to the future limitations, except with the concurrence of the individual interested in that limitation. If such person is not yet in being, as he may not be after an extended period, of course the estate cannot be conveyed, even if all the world should join in the deed."

There is nothing in these grants to create a perpetuity. They are absolute grants, in fee simple, to take effect immediately for the use and benefit of the association generally, not for any particular purpose, but for any use they may see fit to make of it. There is no future estate sought to be created or limited, and no provision restraining alienation. It is true the property may be held indefinitely by the trustees or the society, as any property held in fee simple; but if it should be to the interest or advantage of the society to part with it, there is nothing in these grants to prevent the conveyance, or that would require that any third party should consent to or join in the deed.

In Geosele *vs.* Bimler, 14 Howard, 590, the Court had under consideration the articles of association of the Separatist Society of Zoar, which were similar to the agreements in this case. In delivering the opinion of the Court, McLean, J., on page 608, says:

"Do the articles constitute a perpetuity? We all think they do not. They provide for the continuance of the society for an indefinite period of time, in the exercise of the discretion of the members. The majority of the members may require a sale of the property and break up the association. In fact the majority governs by the election of its officers. Members may be expelled from the society and new one admitted under established rules. Whilst the society has the means of perpetuating its existence, it may be said to depend for its continuance on the will of a majority of its members."

The other claim of the plaintiffs is, that if the grants were directly to the society, they were to an unincorporated association, incapable of taking, and therefore void; and if they went to Rapp in trust for the society, they were equally void for the same reason.

These grants are of both personal and real property, and there can be no doubt that unincorporated societies or associations are capable of taking, directly, and holding personal property in the name of the association. It is done every day, and their right is not questioned. The rule applies only to real estate. All the cases cited by the plaintiffs to show that a grant to an unincorporated society is void, are cases of grants of land or rights in land only, made directly to an unincorporated body; not to trustees for it.

Voluntary associations may be *cestuis que* trust of personal property.

Perry on Trusts, Sec. 63.

But, although a voluntary, unincorporated association cannot take title to real property in their society name, as they are not in law recognized as persons, it may be held for their use and benefit by trustees, and their right to the enjoyment of the property be secured in that way.

Liggett *vs.* Ludd, 19 Oregon, 89.
Second Congregational Society *vs.* Waring, 24 Pick., 304.
Theological Seminary *vs.* Childs, 4 Paige, 423.
Byam *vs.* Beckford, 140 Mass., 31.
Crawford *vs.* Gross, 140 Pa. St., 297.

In Second Congregational Society *vs.* Waring, 24 Pick., 304, one Packard had conveyed certain land to himself, Haward, and twenty-five others, "who have associated together and have entered

into a contract as proprietors for the purpose of building and erecting on said lot a meeting-house for public worship," "to have and to hold said lot to said proprietors and their heirs and assigns, and to each and every person who may hereafter become the lawful owner and proprietor of a pew in said house to be built and erected thereon, and which may and shall be afterwards rebuilt thereon by said proprietors and their successors, to the use and behoof of said proprietors for said purpose, and of each and every lawful owner and proprietor of a pew or pews in the meeting-house to be built and rebuilt on said lot forever."

In their opinion the Court say:

"We are all satisfied that the deed of the *locus in quo* from Packard to Haward and others, operated to convey the premises to them for the use of the proprietors therein named and of each and every lawful owner and proprietor of a pew or pews in the meeting-house to be built and rebuilt on said lot forever. It is no valid objection that the use was shifting. The grantees, who were capable to take did take, upon the execution of the deed to them, and the use would legally shift to those who should afterwards become pew-holders. Multon's case Moor, 96, Pl. 240: Where A makes a feoffment to B to the use of B and his wife that shall be, and B afterwards marries; there the use vested in B at first, but upon the marriage shifted to himself and wife."

"It is no valid objection that the limitation of the use was to depend upon the contingency, that the *cestui que use* should become a pew-holder. When that event happened the use shifted to him and others who held the estate before; and those who so held pews were tenants in common. Sanders on Uses, 131."

The following cases, cited by the plaintiffs, do not support their position:

In Sanderson *vs.* White, 18 Pickering, 328, the question was as to who were visitors of a charitable trust created by will.

Hemlock *vs.* Westbrook, 9 Johnson, 73, was an action of trespass for cutting wood. The defense was proviso in plaintiff's deed, "that the inhabitants of Rochester should be allowed to cut and carry away wood." The Court held that as the inhabitants of Rochester were not incorporated, and incompetent to take an estate by that name, the reservation to them in a deed to a third person was void.

Jackson *vs.* Corry, 8 Johnson, 385, was an ejectment in which the defendants claimed, under a deed to "the people of the County of Otsego." The Court said, "The people of the County of Otsego had not a capacity to take by grant. They were not a corporate body known in the law * * ." A grant to be valid must be to

a corporation, or some person certain must be named who can take by force of the grant, and can hold either in his own name *or as trustee*.

Perkins, Sec. 55, 2 Johns., Cases 324.

In Sloane *vs.* McConaghy, 4 Ohio R., 157, it was held that a bond to the commissioners of the county, no commissioners being elected when it was made, was void.

Briggs *vs.* Mansfield, 10 Pick., 363, was a claim of a right of pasturage, in which it was held that a grant of right of common to the inhabitants for the time being (not incorporated), of a certain territory, conveyed no right to persons not inhabitants at the time of the grant.

German Land Association *vs.* Scholler, 4 Minn., 331, does not decide that lands could not be held in trust for an unincorporated association, but only that the declaration of the trust in that case was too vague and indefinite under the Minnesota Act in relation to trusts, and was therefore void.

It was a complaint to compel the execution of a deed. Defendant being the equitable owner of lands, the legal title to which was in the United States, executed a conveyance of the land to Albert Tofel and others named, who were trustees of the association, in trust for the German Land Association (which was not incorporated, and for the several use and benefit of the several members thereof, according to their respective interests, as the same might thereafter be determined by division or otherwise. Defendant had afterwards obtained the legal title and refused to convey.

It was a proceeding to compel a third party to carry a trust into execution, or rather to create a trust, not to declare void and set aside a trust that had been recognized, in operation, and acted upon, for many years.

In its opinion the Court says:

"One question in the case is whether the beneficiaries are sufficiently described to enable the Court to execute the trust. Irrespective of the provisions of our statutes, it would seem that the trust could not be sustained. Courts of equity carry trusts into effect only when they are of a certain and definite character. If, therefore, a trust is clearly created in a party, but the terms by which it is created are so vague and indefinite that Courts of Equity cannot clearly ascertain the objects of the persons who are to take them, the trust will be held entirely to fail. 2 Story, Eq. Juris, 969, a. Wheeler *vs.* Smith, 9 How., U. S. R., 55."

"In declaration of uses certainty was required, and that especially in three things: in the persons to whom, in the lands, etc., of which, and in the estates by which the uses were declared; and

if there was a want of certainty in either of these the declaration was not good, and a trust is now merely what a use was before the statute of uses."

"Our statutory provision removes any doubt that might otherwise be supposed to exist. In the creation of a trust of this character, it is required that the trust shall be fully expressed and clearly defined on the face of the instrument creating it." * * * "The German Land Association was not by law invested with any legal existence, and the trust deed gives no intimation as to who the persons were associated under that name. The deed was therefore void."

In the present case, the objects of the trust are set forth in the agreements, and the beneficiary is the community or society formed by the agreement, and composed of the persons joining in and signing the agreement. The conclusion of the agreement of 1827 is, "In witness whereof and in testimony that the undersigned have become members of the said community upon the conditions aforesaid, they have hereunto set their hands and seals." This trust would, therefore, be valid under the above decision, as all that is required in the opinion is shown in the agreement creating the trust.

But if the agreements of 1805, 1827 and 1847 were void as creating a perpetuity, or on account of the grantees being incompetent to take—being Rapp and his associates, the associates being unknown; or on account of the association being unincorporated and therefore incompetent to take; or on account of the trust sought to be created by the deed being void as in favor of an unincorporated society incompetent to take, and for that reason no title to the property sought to be conveyed passed to the grantees—or the property reverted to their grantors or their heirs—then the plaintiffs can have no claim to it at this time. If the grants are void now, they were void at the time they were made, and the title of the property and the right to its possession either remained in the grantors or immediately reverted to them, and their right of action occurred for the recovery of it. But the last of these agreements was signed by the ancestors of the plaintiffs more than fifty years ago, and if any property was contributed by them, it was contributed at that time, and possession then taken and since held by the trustees or the society as the joint property of the society, that is, adversely to the plaintiffs; and, under the decision of Spiedel *vs.* Henrici, 120 U. S. R., 377, the plaintiffs and their ancestors have, through their laches and the lapse of time, lost all rights or interest they might have had in the property on these grounds. The question whether the grants and the trust were valid or not, therefore, is immaterial in this case. If the plaintiffs have any interest in the property of

the society, it can only be through these agreements and the trust thereby created.

But again. It is alleged in the second paragraph of the bill that the three thousand acres of land of the society, at Economy, Beaver County, were *purchased* by it in 1825; and it appears from the evidence that the lands at Beaver Falls were also *purchased*. None of the deeds for any of the lands held by the society were in evidence, nor was it shown from whom any of it was purchased; but it was shown that the legal title of all the lands acquired by the association since its organization was held during the life of George Rapp, either by him or by Frederick Rapp, in trust for the society, and after his death by the several trustees upon the same trust. If these lands had been conveyed to the society by any of the ancestors of the plaintiffs, or by any other member of the society, it is to be presumed that the plaintiffs would have shown that fact as a part of their case, to entitle them to the reversion or resulting trust claimed by them. The burden was on them. It is to be presumed that the deeds are on record, or at least there must be some evidence of title in the trustees which might have been produced. Not having shown or attempted to show that the title of these lands was derived from any of the persons through whom the plaintiffs claim, or from any other member of the society, and it appearing that they had been purchased, it must be concluded that they were purchased from some person not a member of the society. If this is the case, and it was conveyed to George Rapp or Frederick Rapp, in trust for the society, and that trust was void for the reasons alleged by the plaintiffs, how are they entitled to any interest in it? If the trust was void, either the title would not pass out of the grantors or it would go to the grantee clear of the trust. The claim that the trust was void proves too much for the plaintiff's case. If they have any interest in property purchased with money of the society, it can only be through the trust—not in opposition to it.

The plaintiffs claim that upon the dissolution of the society the purposes for which the property was contributed to the association have entirely ceased and failed, and the property must revert to the grantors of their heirs, on the ground that the grants of the property contained in the agreements created a limit or base fee only in the property, or a resulting trust to the grantors or their heirs.

The grants are contained in the agreements of 1805 and 1827, which are substantially the same, and are agreements for the formation of an association or community; the only difference being that the agreement of 1827 is more fully expressed. The granting clause is contained in the first article, and, as translated from the

original German by Mr. Fleischman—who was agreed upon by the parties for that purpose—is as follows:

"ARTICLE 1. We, the undersigned, for ourselves, our heirs, executors and administrators, do hereby give, grant and forever convey to the said George Rapp and his associates and to their heirs and assigns all our property, real, personal and mixed, whether it be lands and tenements, goods and chattels, money or investments due to us, jointly and severally, in possession or in remainder, or in expectancy, whatsoever and wheresoever without exception, evasion or reserve, as a free gift of donation for the benefit and use of said association or community, and we do hereby bind ourselves, our heirs, executors and administrators to do and perform all that may be necessary to vest a perfect right and title to the same in the said association, and to place the said property at the full disposal of the superintendent of the said community without delay."

In the second and third articles the subscribers covenant and agree that they and their families will labor for the benefit of the community, and will make no claims for compensation for the same.

This does not create a limited or a base fee. The property is not granted for any particular purpose, or to be used in any specified manner, or for any special object, but generally "for the benefit and use of the said association or community, and is to be placed at the *full disposal* of the superintendent of the community." In the agreement of 1805 it is written: "and to leave the same at the disposal of the superintendents of the community, as if we never had nor possessed it." This is said of personal as well as real estate; of money as well as lands; of property that would necessarily be destayed or parted with in any use made of it, as well as real estate, and the terms used are applied to both. There is no restriction on the use of either, but both are to be at the full disposal of the superintendent. This would include the power of sale. It could be used in any manner that would be beneficial to the society. If it would be to the advantage of the community to sell it, it might be sold.

Wherever words in a conveyance are relied upon as creating a condition subsequent, so as to create a base or determinable fee, they must not only be such as would of themselves create a condition, but must be so connected with the grant as to qualify or restrain it. To make the estate conditional the words must clearly show such intent.

Methodist Church *vs.* Old Columbia Ground, 103 Pa. St., 608.

A conveyance reciting that the property is to be used for a certain purpose, without more, does not create a condition or base fee.

Wilkesbarre *vs.* Wyoming Society, 134 Pa. St., 616.

Harris *vs.* Shaw, 13, Ill., 456.
Cook *vs.* Trimble, 9 Watts, 15.
Kerlin *vs.* Campbell, 15 Pa., 500.
Seebold *vs.* Shitler, 34 Pa., 133.
Seller's Church Petition, 139 Pa. St., 61.

The plaintiffs, in support of their position that a conditional or base fee was created in this case, have cited the following cases, viz.: Scheetz *vs.* Fitzwater, 5 Pa. St., 126; Kirk *vs.* King, 3 Pa. St., 436; Vail *vs.* Long Island, 106 N. Y. 283; Adams *vs.* Logan County, 11 Ill., 336; Universalist Society *vs.* Boland, 155 Mass., 171; Church *vs.* Manning, 72 Md., 116; Easterbrook *vs.* Tillinghast, 5 Gray, 17; Board *vs.* Edson, 18 Ohio, 226; Gebhart *vs.* Reeves, 75 Ill., 301; Reed *vs.* Stauffer, 56 Md., 236; Carmack *vs.* Grimshaw, and Slegel *vs.* Lauer, 147 Pa., 236.

In all these cases except Slegel *vs.* Lauer the limitation of the estate was clearly expressed, showing the intention to convey a base or qualified fee only, and that upon the termination of the specified particular use, the property should return to the grantor. The property was conveyed for a specified purpose and *for no other use*, or *for no other use whatever*, or was granted *for so long as used* for the purpose specified, or to be *used solely* for the specified purpose.

In Carmack *vs.* Edwards, 13 Reports Chy., 334, much relied on by the plaintiffs, a society was formed for the purpose of raising, by subscription of members and by fines and forfeitures, a fund for the relief of deceased members of the society. Rules were adopted, providing for the management of the society. Rule 16 provided that the money arising from the subscriptions, fines, forfeitures and otherwise, should be invested by trustees in the manner therein provided. Rule 35 provided for the payment of annuities to widows of deceased members. Rule 45 provided that all fines and forfeitures should form part of the funds, and should be *applied solely* for the purpose provided by the rules, and towards defraying the expenses of the management of the society. The last surviving ordinary member, T. H. Edwards, died in 1878; the last person entitled to an annuity died in 1892. The fund then belonging to the society was 1,246 pounds sterling. This was claimed by the Crown as *bona vacantia*, by the representatives of Edwards as last surviving member, by S. Clark for the representative of the other members of the society.

Chitty, J., in his opinion, says:

"When a man provides a fund by way of a trust for the payment of a specified annuity to his widow during her life, and makes no

further declaration of trust affecting the fund, the beneficial interest in the fund, or so much of it as is not required for the payment of the annuity, results to himself. The same doctrine would apply to several persons agreeing to provide such annuities for their widows; there would be an ultimate trust in their favor when the purposes of the fund had come to an end. Nor can I see how any difference could justly be made by reason of their raising by common agreement such a fund in different but prescribed proportions among themselves." And he held that the doctrine of resulting trust applied, and that the fund should be distributed among the representatives of the ordinary members in proportion to the amounts contributed by each member to the funds of the society.

In Slegel *vs.* Lauer, 148, Pa. St., 236, a strip of land adjoining a county jail was conveyed to the county, reserving to the grantor and his heirs the free use of the property for an open yard or garden—habendum "to and the use, interest and purpose following, that is to say, to be and remain forever hereafter unbuilt on, in order to prevent any prisoner or prisoners making their escape over the said prison walls by reason or means of any building erected contiguous to said walls." The jail had been removed to another place. The Court, in the opinion, says:

"In view of all the circumstances there seems to arise from the express declaration of purpose a necessary implication of the exclusion of every other. It is a rule in the construction of a statute, pleading, contract or will, or other instrument, that what is clearly implied is as much a part of it as what is expressed. U. S. *vs.* Babbitt, 1 Black, 61, Hanchett *vs.* Weber, 17 Ill. App., 114. The instrument under consideration is therefore to be treated precisely as if it contained a declaration that the grant was for the purpose mentioned *and no other.* But when an estate is conveyed in fee for a specified purpose 'and no other,' the fee is a base fee, determinable upon the cessation of the use of the property for that purpose. Kirk *vs.* King, 3 Pa. St., 436. Scheetz *vs.* Fitzwater, 5, Pa. St., 126."

Nor is there any resulting trust created by the grants:

"If a conveyance has been made upon a valuable consideration, there can be no resulting trust to the grantor, as the payment of a valuable consideration imports an intention to benefit the grantee in case the trusts declared fail, or are imperfectly declared, or do not take effect for any other reason."

Perry on Trusts, Sec. 151.

Although these grants and covenants are called in the agreements, gifts or donations, they are not without a consideration and

a very valuable one. In consideration of them, the donors become members of the community, thus partaking in the benefits derived from the property contributed, and they and their families are to be supported and provided for by the community during life, if they so long remain in it, as well during sickness or inability to labor as in health; or, if they die or leave the society, leaving a family, it is to be supported and cared for as long as it remains in the community.

The fourth and fifth articles set forth the considerations to be received by the donors, and are as follows:

"ARTICLE 4. In consideration of these presents the said George Rapp and his associates do, by these presents, receive the undersigned jointly and severally as members of this community, whereby each of them is entitled to attend all religious meetings, and to receive not only for themselves, but also for their children and families, all such instruction as may be required for their temporal good and their eternal welfare.

"ARTICLE 5. The said George Rapp and *this community* further promise each of the undersigned and their families to provide them with all the necessaries of life, as clothing, food, drink and lodging, etc., for themselves and their families. And this promise is not limited to their days of health and strength, but when any of them shall become sick, infirm or otherwise unfit for labor, the same support and maintenance shall be provided as before, together with such medicines, aid, care and attendance and consolation as their condition may reasonably require. And if at any time after they have become members of the association, the father or mother of a family should die, or should otherwise be separated from the community, leaving their family behind, such a family shall not be left as orphans nor destitute, but shall be entitled to the same rights and maintenance as before, as long as they remain in the association, in sickness as in health, and to such extent as their circumstances may require."

It is not alleged by the plaintiffs in their bill, or at the hearing, that the community had ever failed to fulfill its part of the contract towards any of their ancestors or persons through whom they claim, and it must, therefore, be taken for granted that it has not failed to do so, and that the parties through whom the plaintiffs claim have received the whole of the consideration contracted for in the agreements. And the plaintiffs can have no equitable or other claim to have a resulting trust in the property contributed.

"There could be no resulting trust, for every part and parcel of the grantor's estate, legal and equitable, present or prospective, had passed from him and *was paid for*. Nor was the estate granted

a base fee. It was unincumbered with conditions or limitations. The ancestor received a full consideration for it, and the plaintiffs cannot rescind the bargain."

Kerlin *vs.* Campbell, 15 Pa., 500.

The grant in the present case, in the agreement of 1805 is, "As if we never had nor possessed it"; and in the agreement of 1827, "All our property, real, personal and mixed, * * * without evasion, qualification or reserve, * * * and to place the said property at the full disposal of the superintendents of said community without delay."

It is evident from these expressions that there was no intention to create a base fee or a resulting trust. And deeds are to be construed most strongly against the grantor.

But in this case there is another reason why there can be no resulting trust or reversion in the plaintiffs. The ancestors of the plaintiffs never contributed any property to the society or to Rapp, in trust for it; and for their labor they received the consideration agreed upon and released all further claim on account of it. The plaintiffs can have no reversion or resulting trust in the property contributed by others than their ancestors. There is no such provision in the agreements.

The master, for these reasons finds that none of the plaintiffs have any interest whatever in the property of the society, and are not entitled to any part or share in it upon the dissolution of the society, or to intermeddle in the affairs of the society, or to an account, as prayed for in the bill.

The remaining question, submitted to the master under the agreement of counsel and the opinion of the Court, hereinbefore quoted, is:

"Has the Harmony Society been dissolved either by the common consent of its members or by the abandonment of the purposes for which it was founded?"

On this question the master, in addition to the facts hereinbefore found and stated, finds from the evidence the following principal facts in the history of the association:

By the fourth article of the agreement of August 12th, 1847 (hereinbefore quoted, page 31), Romulus L. Baker and Jacob Henrici were appointed the first Board of Trustees of the Harmony Society.

From their appointment by that agreement, Romulus L. Baker and Jacob Henrici exercised the powers and performed the duties of Senior and Junior Trustees, until the death of Baker in 1868, when Jacob Henrici became Senior Trustee and Jonathan Lenz Junior Trustee.

On July 28, 1888, John S. Duss, who, prior to that time, had been living on a stock farm which he had purchased in Nebraska, came to Economy at the request of Mr. Henrici, Senior Trustee, to take charge of the school there, and was employed by the Board of Elders as school teacher.

In the early part of January, 1890, at the request or suggestion of Mr. Henrici and Mr. Lenz, he and Herman Fischern, a former teacher at Economy, consented to join the association. On January 2nd, 1890, George Kirschbaum, one of the Board of Elders, was killed by an explosion of natural gas; a short time afterwards John Wirth, another member of the Board of Elders, died of paralysis, and on January 22nd, 1890, Jonathan Lenz, Junior Trustee and member of the Board, died suddenly. On January 24th, 1890, John S. Duss, Herman Fischern and Jacob Nicklaus were admitted by the Board of Elders as members of the society, and signed the articles of association, and were afterwards elected by the remaining members of the Board as members of the Board of Elders, to fill the vacancies caused by the death of the members above mentioned. Ernest Woelful was then elected by the Board, Junior Trustee, as successor of Jonathan Lenz, deceased. There was no opposition to or protest against the election of the three new members, either to membership in the association or as members of the Board of Elders, as alleged in the bill.

On April 30th, 1890, during the trusteeship of Henrici and Woelfel, an agreement, Exhibit No. 19, approving, reaffirming and continuing the agreement of August 12th, 1847, and the agreements mentioned in it, and ratifying and confirming all the acts of the Board of Trustees from August 12th, 1847, to the date of the agreement, was signed and acknowledged by all the then members of the Harmony Society, numbering forty-five persons. This agreement was recorded on July 31, 1890, in Beaver County. A copy of it is attached to the answer of Riethmueller *et al.*, as "Exhibit F." It is as follows:

"WHEREAS, After the death of George Rapp, the founder and leader of the Harmony Society, to wit: On the 12th day of August, A. D. 1847. All the then members of the said society, by articles and a compact in writing of that date, duly executed at Economy, in the County of Beaver, State of Pennsylvania, in the presence of William F. Baum, Francis Le Goulan, and Andrew Bimber, and subsequently recorded in the office for recording deeds, in and for the County of Beaver, in Deed Book, vol. 25, page 121, etc., adopted and established a system and plan for the regulation and government of the society, the management of their internal temporal affairs, as also for the management and transaction of their ex-

ternal affairs, and business in and by which articles John Schnabel, ternal affairs and business, in and by which articles John Schnabel, John Eberly, Romulus L. Baker, Jacob Henrici and Jonathan Lenz were appointed and constituted the first Board of Elders therein established; and Romulus L. Baker and Jacob Henrici, two members of the society and of the Board of Elders, aforesaid, were therein appointed and constituted the members of the Board of Trustees of said society, provided for and established, which Board of Elders as thus constituted, and their successors, duly appointed, under the authority and in the manner therein granted and provided, have managed the internal temporal affairs of the society as therein directed until the present time, the present Board of Elders being constituted and consisting of Jacob Henrici, Ernest Woelfel, Michael Stiab, Johannes Scheid, Moritz J. Fredericka, Gottlieb Laupp, J. Jacob Nicklaus, Herman Fischern and John S. Duss, and Romulus L. Baker and Jacob Henrici, the trustees aforesaid, and their successors, were and by said articles authorized and empowered, jointly and severally in their own names, or that of either of them, to make all contracts, purchase and sell, invest the funds of the society, collect debts, receive and pay monies, compromise and settle claims and disputes, appoint and discharge attorneys in fact and at law, institute and conduct legal proceedings and generally to manage and transact all the external business and affairs of the society, to make donations to withdrawing members and for charitable purposes, etc. Also jointly in their own names, to grant, bargain, sell and convey all or any of the lands, tenements and real estate then or thereafter owned or belonging to the society, and for this purpose to execute deeds of conveyance in fee simple or otherwise, in their joint names, etc., as by reference to said articles recorded as aforesaid will more fully appear;

"And Whereas, Romulus L. Baker and Jacob Henrici accepted said trust, acted as trustees of said Harmony Society, managing and transacting their business and affairs under the authority aforesaid, until the death of the said Romulus L. Baker, on the 11th day of January, 1868, whereupon in pursuance of the authority conferred by and according to the terms and provisions of said articles recorded as aforesaid, Jonathan Lenz, a member of said society and of the Board of Elders aforesaid, was duly appointed and constituted a member of the Board of Trustees, to fill the vacancy occasioned by the death of said Romulus L. Baker, and thereafter the external business and affairs thereof were managed and conducted and transacted by the said Jacob Henrici and Jonathan Lenz as trustees, the same being managed, conducted and transacted under and in accordance with the authority given and conferred by the

articles aforesaid until the death of said Jonathan Lenz, on the 21st day of January, 1890; whereupon the Board of Elders, consisting of the members last hereinbefore named and mentioned as constituting said Board, in pursuance of the authority and direction of the articles aforesaid, appointed and constituted Ernest Woelfel (also a member of said society and of said Board of Elders) a trustee, to fill the vacancy thus occasioned in the said Board of Trustees, and the said Jacob Henrici and Ernest Woelfel have since that time conducted and transacted the business affairs of the society according to the terms and provisions of the articles aforesaid;

"And Whereas, More than forty years have elapsed since the execution of the articles and compact aforesaid, adopting and establishing the system and plan for the regulation of the government of the internal affairs of the society, and the management, control and transaction of the external business and affairs thereof, and many changes have taken place in the membership of the society, most of the then members having since died, and others embracing part of the undersigned, having been admitted and become members thereof in accordance with the terms and provisions of said articles, all of the members of the Board of Elders, except said Jacob Henrici, designated and appointed in the said articles, having died, as also their successors in said Board, and all of whom as members of said Board, managed the internal affairs of the society as above recited, and two of those who have been members of the Board of Trustees, and actively engaged in the management and transaction of the external business of the society, under the authority as trustees, or jointly with their co-trustee, Jacob Henrici, still surviving and in their joint names as such trustees, making contracts, purchasing and selling personal property, investing, collecting, receiving and paying moneys of the society, settling claims, purchasing real estate, selling real estate of the society, executing and delivering deeds, assignments, transfers and releases, and generally controlling, managing and transacting all the external business and affairs of the society, have also since died;

"And Whereas, Said society and the undersigned, the present members thereof, have received and enjoyed, and do now enjoy the benefits and advantages resulting from the management and regulation of the internal affairs thereof by the Board of Elders as aforesaid, as also the benefits and profit of the external business and affairs thereof, managed and transacted by those who constituted the Board of Trustees as aforesaid, and it is deemed right and proper that we, the undersigned surviving members of the society, who entered into the articles and compact aforesaid, and the others

who have since become members as aforesaid, should recognize, approve and reaffirm said articles, and approve and confirm what has been done for and on behalf of the society, under and in pursuance thereof;

"NOW, THEREFORE, Be it known to whom it may concern, that we, the undersigned, the surviving and present members of the Harmony Society, at Economy, aforesaid, and all the present members of said society, do severally, and each for himself, covenant, grant and agree to and with the others, and each and all the other members aforesaid, and signers hereof and with those who shall hereafter become members as follows, that is to say:

"1st. We do hereby solemnly recognize, approve, reaffirm and continue the articles of agreement and compact of our association entered into at Economy, on the 12th day of August, 1847, and recorded in the recorder's office of Beaver County, as set forth in the preamble hereto, and declare the same to be in full force as a whole, and all parts thereof, including the agreements and compacts mentioned and designated in the first article thereof, as fully and to the same extent as said mentioned agreements were recognized and established by said first article.

"2nd. We do hereby approve and confirm any and all acts, matters and things done and transacted by the Board of Elders of the Harmony Society, as the same was from time to time constituted, since the date of the articles aforesaid, establishing said Board, and we hereby ratify and confirm the appointment of the present Board of Elders, to wit: Jacob Henrici, Ernest Woelfel, Michael Staib, Johannes Scheid, Moritz Fredericks, Gottfried Laupp, J. Jacob Nicklaus, Herman Fischern and John S. Duss.

"3rd. We do also hereby approve, ratify and confirm all acts, matters and things done, transacted and performed by the Board of Trustees of the Harmony Society, constituted first, of Romulus L. Baker and Jacob Henrici, until January 11th, 1868; afterwards, and from that date until January 21st, 1890, of Jacob Henrici and Jonathan Lenz, and since the last-mentioned date, of Jacob Henrici, Ernest Woelfel, hereby ratifying, confirming, holding, declaring as good and effectual in law and in equity, all acts, matters and things done, transacted and performed by each and all of said trustees in the purchase and sale of personal property, and in the making of contracts, investment of funds, purchase, sale and transfer of stocks, bonds and other securities, loaning or borrowing money, collection and payment of moneys, settlement or compromise of claims or disputes, in the institution and prosecution of legal proceedings, in the employment and discharge of attorneys in fact and at law, in the making of donations, in the purchase of real estate,

and in the sale thereof, in the execution and delivery of deeds, conveyances, transfers and assignments, whether of and pertaining to real or personal estate, in the execution or delivery of notes or obligations of any kind, and generally all acts heretofore done by said trustees, in the conducting, managing and transacting of the business of the society, and whether done by said trustees or either of them, severally and in his own name as trustee, or jointly in the joint names of himself and his co-trustee.

"4th. We do also hereby approve and confirm the acts of the Board of Elders in the appointment of Ernest Woelfel, as co-trustee with Jacob Henrici, and declare said Jacob Henrici and Ernest Woelfel, the present Board of Trustees, authorized and empowered to do, perform and transact any business of the society, and to the full extent of the powers and authorities mentioned and designated in and conferred on the Board of Trustees, in and by the articles hereinbefore mentioned, made and entered into August 12th, 1847, and recorded as aforesaid.

"In witness whereof we have hereunto set our hands and seals this 13th day of April, A. D. 1890."

(Signatures.)

(Acknowledgement.)

Ernest Woelfel, Junior Trustee, died on July 26, 1890, and on July 28, 1890, John S. Duss was elected Junior Trustee in his place, and Conrad Hermansdoerfer was elected a member of the Board of Elders to fill the vacancy caused by the death of Ernest Woelfel. At this election Henry Feucht's name was suggested by Mr. Henrici for member of the Board, but was protested against by the other members, except Mr. Duss, on the ground that he was continually stirring up trouble in the society. Mr. Duss, though present, took no part in this election, and did not vote for either trustee or elder.

From the earliest times of which there is evidence in this case, the Harmony Society, in addition to its farming at Economy, carried on very extensively manufacturing of various kinds, both at Economy and elsewhere, and was also interested and engaged in many other industries and businesses, through which it accumulated a large amount of property of various kinds, and also incurred large liabilities. These industries and liabilities will be referred to hereafter.

For a long time prior to the election of John S. Duss as Junior Trustee, the Senior Trustee, Mr. Henrici, had had charge of the finances of the society, and the Junior Trustee had looked after the farming and internal operations of the society, and when John S. Duss was elected Junior Trustee, on July 28th, 1890, he had no knowledge of the finances of the society nor of what its property

consisted; but after some time, through notices from banks of notes of the society falling due, and in other ways, he learned that the society was indebted, and about December 1, 1891, he first learned that its liabilities were in the neighborhood of $1,000,000. But, on account of there having been theretofore no general book of accounts kept, of the business affairs of the society, which would show either what business it was engaged in, what its debts and liabilities were, or what its property and assets were, and of the fact that all the financial business of the society had been for years transacted by Mr. Henrici, who at first was disinclined to give him information on these subjects, he could not for a considerable time ascertain ,with exactness, either the extent of its liabilities or its means of payment. But at length, through information received from Mr. Henrici, and the assistance of an expert accountant, James Dickson, he, about October or November, 1892, ascertained that on April 1st, 1892, the indebtedness or liabilities of the Harmoney Society amounted to $1,474,958, bearing interest to the amount of about $60,000 per annum; about $1,000,000 of this sum being the indebtedness of the Economy Savings Institution to its depositors and others. This institution was a partnership private bank, in which the Harmony Society was a partner, having at that time an eight-tenths interest, the other parties being Hon. Henry Hice and John Reeves. To meet this indebtedness the society had, of immediately available assets, about $117,444, and securities of the par value of $505,900, which were pledged in banks as collateral security for notes of the society to the amount of $291,588, held by the banks. This indebtedness will be more fully referred to hereafter.

It having become necessary to raise money to meet this indebtedness—some of the creditors pressing for immediate payment—an instrument, Exhibit No. 49, ratifying and confirming the agreements of August 12th, 1847, and April 30, 1890, and authorizing the trustees to sell the real or personal property of the society, and also to borrow money and give mortgages on the real estate of the society therefor, was, at a meeting of the members of the society, held at Economy on December 20th, 1892, after it had been read over and fully explained to them, signed and acknowledged by thirty-three members of the society, being all of the then members, except Benjamin and Henry Feucht and their wives, who refused to join in it. This paper, a copy of which is attached to the answer of Riethmueller *et al.*, as "Exhibit G," is as follows:

"WHEREAS, the undersigned, being all the members of the Harmony Society, at Economy, Beaver County, State of Pennsylvania, deem it proper and desirable that there should be some suitable,

proper and certain evidence of membership in said society, and that the rights and powers of the trustees of said society should be more clearly defined and understood;

"Now, Therefore, While we do hereby ratify and confirm the Articles of Agreement and compacts of our Association entered into at Economy on the 12th day of August, 1847, and those of April 30th, 1892, confirmatory of the former and ratifying the acts of the Board of Elders and Board of Trustees, both of which Articles of Agreements are recorded in the Recorder's office of Beaver County, and are hereby reaffirmed, we and each of us, present members of the said Harmony Society, do hereby state and declare that this declaration, agreement and grant of power is, and is to be taken and considered as supplementary to the agreements, compacts and articles above mentioned, to wit:

"1st. The present members of this society and association are Jacob Henrici, John S. Duss, J. Jacob Nicklaus, Moritz J. Fredericks, Gottfried Lauppe, Johannes Scheid, Franz Gillman, Hugo Miller, Conrad Hermansdoerfer, Julius Stickel, Eduard Kellerman, Henry Feucht, B. Feucht, Blazsius Platz, Sigmund Stiefvater, Regina Lautenschlager, Christina Rall, Karoline Molt, Katrina Nagel, Elizabeth Beck, Lena Rall, Thirza Feucht, Rebecca Feucht, Margaret Feucht, Christina Hoerer, Susie C. Duss, Bertha Geratch, Pauline Stickel, Johanna Hermansdoerfer, Maria Diem, Barbara Boesch, Fredericka Munz, Dorotha Hoehr, Philipina L. Wolfangle, Gottlieb Riethmueller, Samuel Sieber and Elizabeth J. Sieber, and no other person or persons than those above named is a member thereof, and that for the future it is agreed that before any person can become a member of the Harmony Society, he or she shall sign or make his or her mark to his or her name on the roll of membership, which shall always be kept in the record book of the society, which book was established by the aforesaid Agreement of 1847, and is the same in which are entered copies of said articles above mentioned; and shall also sign a written agreement in said book, binding himself or herself to the observance and performance of all and singular, the declarations, stipulations and agreements of the members of the society as contained in the several written articles above mentioned and in these articles, and the book aforesaid containing said roll of membership shall be the sole and exclusive proof of membership in the society.

"2nd. It is hereby declared and agreed that the present Board of Elders of said society are Jacob Henrici, John S. Duss, Johannes Schied, Gottfried Lauppe, Moritz J. Fredericks, J. Jacob Nicklaus, Conrad Hermansdoerfer, Hugo Miller and Gottlieb Riethmueller; and the present Board of Trustees of said society are Jacob Henrici

and John S. Duss. And we do hereby grant and assign to said trustees and their successors, and do hereby agree and declare that the legal title to any and all the property, real and personal, owned or possessed by said society, wherever the same is situated or found, is and is to be taken and considered as fully vested in the said trustees, Jacob Henrici and John S. Duss, above named, and held by them in trust for the society, but with full and complete power and authority in said trustees, their survivors and successors, at such time or times as they may deem advisable, and for the best interests of the society to sell and dispose of the same, or any part or parcel of the same, and for this purpose to make assignments or bills of sale of said personal estate, and to execute and deliver deeds in fee simple, or for any less estate, for any or all said real estate thus sold. This declaration and power to apply to and embrace any and all lands wherever situated, now or hereafter belonging to said Harmony Society, or held in trust for said society, the title to which may be, or stand, in the name of Frederck Rapp, or George Rapp, or of R. L. Baker and Jacob Henrici, trustees; Jacob Henrici and Jonathan Lenz, trustees; Jacob Henrici and Ernest Woelfel, trustees; Jacob Henrici and John S. Duss, trustees; or any or either of them and their successors, and any Board of Trustees hereafter appointed.

"3rd. To remove any possible doubt or misunderstanding as to their right and power in reference thereto, we hereby give and grant to said trustees above named, Jacob Henrici and John S. Duss, and to either of them and their survivors and successors full power, from time to time, and at such times as they or either of them may deem for the true interest of the society to borrow such sum or sums of money for such length of time, at such rates of interest, and upon such other terms as the said trustees, or either of them or their survivors or successors may deem advisable; and jointly or severally to give notes, bills of exchange, bonds, due bills or other evidences of debt therefor, and to secure such loan or loans of money, bonds, notes, due bills or other evidences of debt by pledge or assignment of any stocks, bonds or other personal property of any kind now belonging or that may hereafter belong to said society, and by mortgage or mortgages upon, or deeds of trust of, all or any part of the real estate and leaseholds of real property, which said society now own or possess, or hereafter may own or possess, and for this purpose the said trustees above named, or either of them, their survivors or successors, shall have full power and authority to make, execute and deliver any and all such instruments and conveyances as may in their judgment be reasonably

necessary to enable them, or either of them, to carry the foregoing powers into full effect.

"And in the execution of any instruments or conveyances in writing or otherwise that may be or so become reasonably necessary in the exercise or execution of any of the powers hereinbefore granted, either of said trustees, their survivors or successors may execute the same, and for that purpose may sign the joint names of said trustees, as in the following form: "Jacob Henrici and John S. Duss, trustees," or "Henrici and Duss, trustees," by (name of trustee executing) "trustee."

"IN WITNESS WHEREOF, we have hereunto set our hands and seals this 20th day of December, A. D. 1892."

(Signatures:)

(Acknowledgement.)

Under the powers thus granted the trustees borrowed from Mr. Harry Darlington, trustee, $400,000, and on December 21st, 1892, executed and delivered to him a mortgage on real estate of the society, payable in five years, with the privilege of payment at any time after three years, as security for the loan. This money was borrowed for the purpose of paying pressing creditors and redeeming securities pledged as collateral, thus giving time to convert their securities and other properties into cash without loss for the payment of their indebtedness, and it was used for that purpose. Afterwards more money being needed for the same purpose, the then trustees, on May 21st, 1893, borrowed from Mr. Darlington, trustee, an additional $100,000, and executed and delivered to him a second similar mortgage, payable in three years, with privilege of payment at any time after one year, as security for its payment. This second mortgage has since been paid.

Jacob Henrici, Senior Trustee, died on December 25th, 1892, and on December 27th, 1892, John S. Duss was elected his successor as Senior Trustee, and Samuel Sieber was elected Junior Trustee.

On February 10th, 1893, Benjamin Feucht and Rebecca, his wife, Henry Feucht and Margaret, his wife, Tirza Feucht, Dorothea Hoehr, Regina Lautenschlager, Edward Kellerman and Christina Rall—all members of the society who had signed the agreement of April 30th, 1890—filed their bill in equity (Exhibit No. 15), against the twenty-seven remaining members of the Harmony Society, in the Court of Common Pleas of Beaver County, Pa., praying for a dissolution of the society, a division and distribution of its assets, for the appointment of a receiver, and for an injunction to restrain the defendants from disposing of or encumbering the property of the society, and from creating any debt or liability of the society.

This bill was signed and sworn to by Henry Feucht alone.

On February 13, 1893, at a meeting of the members of the society, held in the church at Economy, the resolutions in German (being Exhibit No. 87) were adopted—and of which the following is a translation, viz.: (See testimony, pages 2792 to 2708, and 1068 to 1070.)

"Since it has come to our knowledge that Benjamin Feucht, Rebecca, his wife, Henry Feucht and Margaret, his wife, Tirza Feucht, Dorothea Hoehr, Regina Lautenschlager, Edward Kellerman and Christina Rall, have caused the filing of a bill in equity in the Court of Common Pleas of Beaver County, Pennsylvania, against the other members of the Harmony Society, in which, among other things, the appointment of a receiver and the dissolution of the society and a division of the assets of the society are prayed for, in which bill false and scandalous charges against our trustees, our Board of Elders and ourselves are made; therefore, be it resolved,

"First. That we protest earnestly against the filing of this bill, and we herewith make known our resolution to stringently oppose the same; that the same are directed against the fundamental laws of our society and seem to spring from selfish and unchristian motives.

"Second. That we herewith declare as untrue the charges which are made in said bill against our trustees, against our elders and against ourselves, and we herewith embrace this opportunity to declare our perfect trust in our present trustees and elders.

"Third. That we require our trustees to employ counsel to take all necessary steps which they may deem wise and necessary to defeat said bill."

These resolutions were signed by twenty-four members of the society, three of whom, viz.: Regina Lautenschlager, Dorothea Hoehr and Christina Rall were named as plaintiffs in the bill.

On March 3, 1893, a motion for a preliminary injunction was refused by the Court after hearing of affidavits and argument. On April 19, 1893, defendants' answer was filed, and on June 30, 1893, the bill and all proceedings were discontinued on record by direction of the plaintiffs.

Immediately after the refusal of the injunction, negotiations were commenced on the part of the Feuchts for a settlement, which, for the reasons hereafter stated, finally resulted in the payment of $5,600 each to the five Feuchts and the conveyance to them of eight acres of land in Chartiers township, Allegheny County, Pa., and their withdrawal on May 16th, 1893, from the society and their releasing of all claims they might have against the society or its

property and the discontinuance of the proceedings in equity. (See testimony of Henry Hice, pages 1579 to 1582 and Exhibits 12 and 20.) The other four plaintiffs in the bill remained in the society and are defendants in the present bill.

At the time of the filing of the Feucht bill, and for some time prior to that time, the affairs of the Economy Savings Institution, of which the Harmony Society was the principal owner, were in a very critical and dangerous condition, on account of a deficiency of funds to pay its depositors if called upon to do so. The filing of that bill and the publications in the newspapers in regard to it and to the condition of the society, both before and after it was filed, caused a great distrust of the bank and a run on it by the depositors, which was heaviest on the day the bill was filed, and also caused great distrust and uneasiness among the other members of the Harmony Society, and fears as to the ability of the society to meet its indebtedness and prevent its dissolution. On account of this dangerous situation of the bank and of the society through the distrust created by these proceedings, and the rumors put in circulation on account of them, it was deemed best by the trustees of the society and their counsel to accept the propositions made by the Feuchts and make the settlement above stated, thus putting an end to the litigation, and, as they believed and expected, to the rumors and distrust caused by it.

After the filing of the Feucht bill, the following named members also withdrew from the society, and formally released and discharged the society from all claims they or their heirs might have against it or its property, receiving from the trustees, out of the funds of the society, the sums hereafter stated, viz.:

Hugo Miller withdrew March 8, 1893, receiving	$5,000
Julius Stickel, Pauline, his wife, and his stepdaughter, Bertha Garatch, withdrew on March 29, 1893, receiving, together	3,500
Jacob Nicklaus withdrew May 5, 1893, receiving	5,000
Sigismund Stiefvater withdrew May 7, 1893, receiving	5,000
Moritz J. Fredericks withdrew June 5, 1893, receiving	5,000
Blazsius Platz withdrew June 9, 1893, receiving	5,000
Christina Hoerer and her son, Leonard Hoerer, withdrew June 23, 1893, receiving	5,000
Samuel Sieber and Elizabeth, his wife, withdrew July 6, 1893, receiving, together	5,000

No other members have withdrawn from the society since these left it; and all of those named, except the last named, withdrew while the Feucht litigation was pending, and while Henry Feucht

remained in Economy. He states in his testimony (page 166) that he remained there until June 21st, 1893. And all of these withdrawals, except that of Sieber and his wife were, in the opinion of the master, caused by that litigation.

On July 6, 1893, Samuel Sieber, when he withdrew from the society, resigned his position as trustee, and Gottlieb Riethmueller was elected his successor as Junior Trustee.

John S. Duss and Gottlieb Riethmueller still continue to hold the offices, exercise the powers and perform the duties of trustees of the society, and with the other members of the Board of Elders are the governing body of the Harmony Society.

On April 11, 1894, all of the then members of the Harmony Society, eighteen in number, signed and acknowledged an agreement (Exhibit No. 80), by which, for the reasons therein stated, they authorized the trustees to convey all the real estate of the society, situated in Allegheny and Beaver Counties, to the Union Company, a corporation under the laws of Pennsylvania, for the purpose of purchasing, holding and selling real estate, in consideration of all the capital stock of the company of the par value of $400,000, except stock of the par value of $2,500, said stock to be held by the trustees for the use and benefit of the Harmony Society. Under the authority conferred by this instrument and their general powers as trustees, the trustees, on April 12, 1894, executed conveyances of all the real estate of the society in Allegheny and Beaver Counties (except a few scattered lots valued together at $3,766. See Exhibit No. 90) to the Union Company in fee, subject, however, to the lien of the two mortgages hereinbefore mentioned, in favor of Harry Darlington, trustee. Certified copies of these conveyances were offered in evidence by the plaintiffs as Exhibits No. 30 and 31.

"WHEREAS, The Harmony Society at Economy, Beaver County, Pennsylvania, is now indebted to various persons in large sums of money, payment of a part of which may be demanded at an early day; and

"WHEREAS, The trustees of said society are advised that a suit is about to be brought against it in the name and on behalf of a large number of persons who claim to be lawful heirs of certain deceased members of said society, the object of said suit being to compel the society to pay large sums of money to said persons as portions of the society's property claimed to be due to said persons as heirs of such deceased members, which claims we regard as totally unfounded; and

"WHEREAS, It may become necessary for said trustees, in order that they may obtain money wherewith to pay the debts of the so-

ciety, and otherwise properly protect its interests, either to borrow money and give security for the payment thereof, or sell the lands of the society and thereby obtain cash for the payment of said indebtedness; and

"WHEREAS, The trustees are advised by counsel that the lands of the society can be better managed, as well as made more available for the purposes of collateral security in case loans are to be effected, and in case of sale a more satisfactory title can be given to the purchaser, if said lands should be first conveyed to an incorporated company, to be thereafter managed, sold and disposed of, by and in the name of said incorporated company; and also avoiding thereby inconvenience and trouble that may arise from time to time by change of trustees, by death or otherwise.

"THEREFORE, We the members of said Harmony Society, do each hereby express our consent, wish and request that John S. Duss and Gottlieb Riethmueller, the present trustees of said society, shall forthwith sell, transfer and convey to the Union Company, a corporation duly created and organized under the laws of the State of Pennsylvania, all the lands, tenements and hereditaments, situated in Allegheny and Beaver Counties, Pennsylvania, now owned and held by said trustees for the benefit of the said society to the end that all said lands, tenements and hereditaments may be owned, held and managed by said incorporated company and be sold and otherwise disposed of from time to time in pursuance of proper corporate action, as may be determined by the directors and officers of said incorporated company.

"The capital stock of said incorporated company, however, to be owned and held by the said trustees for the benefit of the society, in accordance with and on the terms and conditions of the articles of association of said society and the ratifications and modifications thereof, as the same now exists, to the extent of three hundred and ninety-seven thousand five hundred ($397,500) dollars, out of a total capital of four hundred thousand ($400,000) dollars.

"WITNESS our hands and seals this 11th day of April, A. D. 1894."

(Signatures.)

(Acknowledgment.)

The eight thousand shares of the capital stock of the Union Company in February, 1896, was held as follows, viz.: Henry Hice, 10 shares; Gottlieb Riethmueller, 10 shares; Conrad Hermansdoerfer, 10 shares; James Dickson, 10 shares; John S. Duss, 10 shares, and Duss and Riethmueller, trustees, 7,950 shares, of the par value of $50 each. The directors of the corporation were Duss, Hice, Dickson, Riethmueller and Hermansdoerfer. President, John S.

Duss; secretary and treasurer, James Dickson. Hice and Dickson are the only stockholders who are not members of the Harmony Society, and their stock, and that of all the others, is the property of the Harmony Society, and held for it. (See testimony of James Dickson, pages 1875 to 1893; of J. S. Duss, page 2641, and of Hon. Henry Hice, pages 1591-2, and 1666.)

From the time that John S. Duss found that the Harmony Society was largely indebted, he has made great exertions to have the indebtedness paid off out of the property and assets of the society, and has been so far successful that in February, 1896, the whole indebtedness of the society, including its liability as partner in the Economy Savings Institution, had been paid—except the sum of $350,000 still owing to Mr. Darlington on his first mortgage; the sum of $10,000, other indebtedness, and a contingent liability of about $11,000 to depositors of the Economy Savings Institution, who could not be found; for the payment of which indebtedness the society had at that time assets of the value of $530,397, exclusive of the 2,600 acres of land and improvements at Economy, and 2,000 acres of land in Michigan. (See testimony of James Dickson, pages 1852 to 1858, and of J. S. Duss, page 2675.) And this while carrying on and maintaining the society. How this has been done will be more fully referred to hereafter, in connection with the indebtedness.

The remaining members of the society, although reduced in number by deaths, still occupy their property at Economy, still maintain their organization as the Harmony Society, as provided in the agreement of August 12th, 1847; the Board of Trustees and the Board of Elders still continue their organization and attend to the affairs of the society.

In the second article of the agreement of February 15th, 1805 ante page 7), the subscribers agreed

> "to show due and ready obedience toward those who are appointed and chosen by the community as superintendents in such a manner that not only we ourselves endeavor by the labor of our hands to promote the good and interest of the community, but also to hold our children and families to do the same."

And in the second article of the agreement of March 9th, 1827 (ante page 15), they agreed to

> "manifest a ready and cheerful obedience toward those who are or may be appointed as superintendents thereof, holding ourselves bound to promote the interest and welfare of the said community, not only by

the labor of our hands, but by that of our children and families and all others who now are or hereafter may be under our control."

By these articles, provision is made for the carrying on of such industries for the benefit and support of the association as should be determined upon by the superintendent or head of the society, and in such manner as he should direct.

George Rapp was the superintendent or head of the association from its organization in 1805 until his death in 1847. What industries were carried on under his direction prior to 1827 was not shown by the evidence; but from the testimony of Christian Schwartz, one of the plaintiffs, whom his father brought to Economy with the rest of the family in 1826, when he was three years of age, and other younger witnesses, it appears that as far back as the recollection of the witnesses reached—of some, as far back as 1830—the society, in addition to the farming carried on by it, had at Economy a large silk factory, a cotton factory, a woolen factory, a large distillery, a saw mill and a flour mill, and that the manufacture of silk, cotton and woolen cloths and other goods was carried on extensively by it; that it had vineyards, and manufactured and sold whiskey and wine, and made beer; that the manufacture of silk goods continued until about 1850, of cotton and woolen goods until about 1857, and of whiskey until the United States tax was imposed upon it, and of wine until 1890, and the sale of whiskey until that of its own manufacture was exhausted, and of wine until lately; that in 1850 it also carried on a planing mill, shoemaking, tailoring, weaving, tanning, coopering, cabinet making and harness making; that the saw mill, planing mill and flour mill are still carried on by tenants, to whom the mills are leased. (See testimony of C. Schwartz, pages 92 to 96, and 104-5; of Fredericka Mountz, pages 1378-9, and 2105-6; of H. Breitenstein, pages 1958; of H. Hice, pages 1553-4; of Henry Feucht, pages 166 to 169, 321 and 341-2.)

Farming is still carried on at Economy under the direction of the trustees and elders as extensively as it has been, but on account of the reduced number of the members, principally by hired labor. The manufacture of whiskey was abandoned when the United States tax on it was imposed in 1862. The saw mill and planing mill business were carried on until 1892.

In 1855 the society, in connection with the Darlington & Cannelton Railroad, carried on the coal business at Cannelton, Beaver County. In 1859 they purchased the property and carried on the business until 1879 or 1880, and sold their interest about 1882 or 1883. (See Hice's testimony, page 1633.)

In 1857 they had stock in the Little Saw Mill Run Railroad Company, a corporation carrying on the coal business in Allegheny County, having coal fields at Banksville and a short railroad from there to the Ohio river. The trustees, Henrici and Lenz, took an active part in the management of the company. The interest of the society continued until they sold their stock in 1895.

In 1880 they became interested in the Chartiers Block Coal Company, a corporation owning large tracts of coal on Painter's run and Tom's run, Allegheny County, which were mined by lessees. They still hold their stock in this company.

In connection with their interest in the Block Coal Company they assisted in building the Pittsburgh, Chartiers and Youghiogheny Railroad, connecting this coal field with the Pittsburgh and Lake Erie Railroad. The capital stock of this company was 12,000 shares of $50 each, of which the society held 7,866 shares. This stock was sold in 1891 or 1892.

They were also interested in the Valley Car Works at Beaver Falls, from 1899 until they burnt down on April 9th, 1892.

In 1859 they engaged in the manufacture of coal oil at Cannelton with a Mr. Waterbury, and had quite a large plant, and were also interested as partners with Mr. Crom and Oliver P. Scaife in distilling and refining coal oil for illuminating purposes, and had a large plant. After the discovery of petroleum up the Allegheny river, they, about 1861, ceased to carry on these businesses as unprofitable.

At that time the society was the owner of about 6,000 acres of land in Warren County, Pa.; how or when they became the owners of this land was not shown. About 1861 they commenced drilling wells and producing petroleum oil upon it. This business they continued until 1892, part of the time upon a very large scale, producing large quantities of oil and employing a great number of men, and it was for a time very profitable, but towards the last the production of oil decreased to a very small quantity. The oil and lumber business were managed principally by Mr. Lenz while he was trustee.

A large portion of this 6,000 acres of land in Warren County was valuable timber land—pine and other timber; and the society established saw mills upon it and engaged in the lumber business, rafting their lumber on the Ohio river to Economy, Rochester,

They also had saw mills at Cannelton, in connection with their Steubenville and other points, until the timber was about exhausted. mining and railroad operations there, for the manufacture of lumber for building and repairing their cars, etc., which they used in their

business there, at which they employed a number of men. They ceased to operate these mills about 1880 or 1881.

In 1859 and 1860 the society purchased about 700 acres of land at Beaver Falls, for which they were offered in 1865 $80,000. In 1866 they laid this land out in lots and put it on the market for sale, employing John and H. T. Reeves as their agents. The greater part of it has been sold, and the proceeds of the sales received by the society from 1865 to 1896 amounted to the sum of $1,110,648.78. This land is now the borough of Beaver Falls.

In 1867 the society became interested with Messrs. Hussey, Howe, Brown and Binns, of Pittsburgh, in a cutlery works which had been carried on at Rochester. In 1868 a corporation, the Beaver Falls Cutlery Company, was formed, with a capital of $400,000. The society took a large amount of the stock, and the works were removed to Beaver Falls. The society bought out the stock of Hussey & Binns in 1870, and of Howe & Brown in 1872, and became the sole owners. The company was then reorganized and the capital reduced to $250,000—seven-tenths of which was held by the society in the name of Henrici and Lenz, trustees, and one-tenth each by Hice, John Reeves, and H. T. Reeves; the three-tenths of the stock having been transfered to them by Mr. Henrici, he insisting that they should assist in the management of the business. The control of the business, however, was in the trustees of the society, as principal owner—practically in Mr. Henrici, as Mr. Lenz did not take any active part in it. This business was continued against the protest of both Mr. Hice and Mr. John Reeves (see testimony, pages 1537-8 and 1756) at great loss, until about 1887, when the works were closed. This company did a large business and employed many men; and the reason given by Mr. Henrici why the cutlery works and the Western File Works, a manufactory hereafter referred to, should continue in operation, although losing money, was (page 1756), "They must run; these men must be employed; we have sold them lots and built them houses, and we have got to keep these factories running to keep these men employed."

When the cutlery company was reorganized in 1872, it had no working capital, and by the direction of Mr. Henrici, it was drawn by the company from the Economy Savings Institution—a private bank hereafter referred to—to a large amount; and the indebtedness to that bank continued and increased until, on July 31st, 1890, its indebtedness to the bank on overdrafts, as shown by its pass-book with the bank, Exhibits Nos. 52 and 53, and bank statement, Exhibit No. 68, amounted to the sum of $521,674.22; and on January 13th, 1892, as shown by the same book, Exhibit No. 52, to $438,501.02; and on February 4th, 1896, to $430,590.87. These Ex-

hibits, Nos. 52, 53 and 68, also show that on July 31, 1890, the Cutlery Company was indebted to the Savings Institution, in addition to its indebtedness on overdrafts, in the further sum of $300,000, on its note for that amount, held by the Savings Institution, making the whole indebtedness on July 31st, 1890, $821,674.22; on January 13th, 1892, $738,501.02, and on February 4th, 1896, $736,590.87.

The society was also interested in the Western File Works. These works were built and started at Beaver Falls by Foshey & Fessenden, and were carried on by them for some time, until 1875 or 1876, a limited partnership was formed, in which Mr. Henrici took an interest of $40,000 for the Harmony Society. They were carried on in this way until 1884 or 1885, when Mr. Henrici bought for the society the interests of Fosey & Fessenden who had, together, an interest of $37,000. After this the works were managed by the society, through their agents, until they ceased operations, in 1892. This company was also carried on at great loss, and from its organization until its close drew money from the Economy Savings Institution, by the direction of Mr. Henrici, and when they closed in 1892, they were indebted to that bank on overdrafts to the amount of $402,376.43. Henry Hice and John Reeves had also an interest in this company to the amount of $500 each.

The society was also interested in the Beaver Falls Car Works, a corporation organized in 1879, with a capital of $50,000: $47,000 of which was held by Henrici and Lenz, trustees for the Harmony Society, and the remainder, $3,000, was held by John Reeves, Henry T. Reeves and Henry Hice. The works were built in 1879, and the business continued until the works were burnt down on January 15th, 1886. They were never rebuilt.

On March 2nd, 1868, the Harmony Society, by its trustees, Jacob Henrici and Jonathan Lenz, by written articles of agreement of that date (Exhibit No. 48), entered into partnership with John Reeves, Henry T. Reeves and Henry Hice, to carry on the business of bankers and brokers at Beaver Falls, under the firm name of the Economy Savings Institution, with a capital of $20,000; seven-tenths of which, or $14,000, to be paid in and owned by the society, in the name of Henrici and Lenz, trustees, and one-tenth, or $2,000, to be paid in and owned by each of the other three partners. Under this agreement each member of the firm was entitled to one vote for each tenth of the capital owned by him, and a majority of the votes cast determined all questions. The officers of the bank were: President, Henry Hice; vice-president, H. T. Reeves, and cashier, John Reeves. The capital was subsequently increased to $450,000—held in the same proportions by the same

persons—and all paid up. (See testimony of John Reeves, page 1735), and continued in this way until the death of H. T. Reeves in 1889, when, on the settlement of his interest in the bank, as well as in all other business in which he was engaged along with the society, was taken for the society by trustees, Henrici and Woelful, from which time the society had an eight-tenths interest in the bank. (See testimony of John Reeves, page 1757.) The bank had a large business, having in 1890 between 2,000 and 3,000 depositors, whose deposits on July 31st, 1890, at the time John S. Duss became Junior Trustee of the society, aggregated $1,000,796.16—about two-thirds of which was payable on demand and one-third on thirty days' notice. At this time, however, the affairs of the bank were in a very bad condition, the overdrafts of the Beaver Falls Cutlery Company, hereinbefore referred to, amounting to the sum of $521,674.41, its note for $300,000 unpaid, and the overdraft of the Western File Works, also before referred to, amounting to $314,360.47, a total overdraft and note of $1,136,034.88, as shown by the bank statement of July 31st, 1890, in evidence as Exhibit No. 68, and the testimony of George W. Morrison, pages 1771-2. At this time these overdrafts and notes were uncollectable.

This statement of July 31st, 1890, and the testimony of George W. Morrison, pages 1771-2, show that the indebtedness and available resources of the bank at that time were as follows:

Indebtedness to depositors	$1,000,796 16
Indebtedness to other banks	1,997 18
Indebtedness on bills payable	80,000 00
	$1,062,793 34

Available resources:

The items of loans and discounts are there stated as $619,267.94; but included in that are a note of the Beaver Falls Cutlery Company for $300,000, a judgment against Blake & Fessenden for $30,000, and a judgment against the Western File Company for $150,000—aggregating $480,000—all of which were uncollectable; leaving as—

Loans and discounts	$139,267 94
Due from other banks	35,682 46
Cash	31,502 29

Drafts and checks	3,532 10
Beaver Falls Gas Company stock	7,000 00
Credit items	13,271 89
Total available assets	$230,256 63
Leaving a deficiency of at least	$832,536 66

This was the condition of the Economy Savings Institution on July 1st, 1890. On April 1st, 1892, its indebtedness to depositors and others was $1,081,456.02, about two-thirds of which was payable on demand and about one-third on thirty days' notice. And its available assets were about $30,000. (Testimony of James Dickson, page 1813.)

The Economy Savings Institution not being a limited company or corporation, but merely a partnership, the Harmony Society—being a partner—was liable for its whole indebtedness, although it might, after having paid the debts, have recourse against the other partners. How the debts of the bank were paid by the society will be stated hereafter.

In 1875 the society became interested in H. M. Meyers & Company, Limited, in the manufacture of shovels at Beaver Falls. In 1889 their interest was bought out and a corporation was formed known as H. M. Myers & Company.

During 1877 and 1879 they held stock to the amount of $400,000 in the Pittsburgh & Lake Erie Railroad Company, and they also held stock in the Pittsburgh Southern Railroad Company.

Prior to 1877 the Economy Savings Institution had advanced money to C. C. Modes & Company, carrying on a glass works at Beaver Falls. In 1877 the Harmony Society bought their works at Sheriff's sale and carried on the business for some years. It was not successful, and they sold out to other parties before 1880. (Testimony of H. Hice, page 1545.)

In 1857 the society purchased the stock of a glass company at Bridgewater and carried on the business for a short time until they could sell the stock.

They had a large amount of stock in the Valley Glass Works, a corporation, until it burned down on April 9th, 1892. They still have an interest in the winding-up of its affairs. (Testimony of H. Hice, pages 1531-2.)

In 1877 the society bought the Beaver Falls Steel Works from Abel & Pedder, to whom they had advanced a large amount of money. They carried it on until 1893, when they sold it to James M. May. (Hice's testimony, page 1555.)

At one time the society bought an axe factory at Beaver Falls

from Mr. Graff, to whom they had made large advances of money, and had to take the works to save their investment. They carried on the business extensively, until they sold it to Mr. Hubbard, of Bakewell, Hubbard & Company, of Pittsburgh.

The society became the owners of a pottery works at Beaver Falls, formerly carried on by a Mr. Webster; and carried it on for some time with him as manager.

In 1887 they were engaged in the manufacture of bricks at Leetsdale, Pa., and it is still continued there by their lessees. There is no evidence of when it was commenced.

In 1895 the society still carried on the flour mill, cooper shop, machine shop, plumbing shop, carpenter shop, cabinet shop, butcher shop, laundry, bakery, dairy, orchards, farming and raising live-stock, employing seventy-nine men, including one policeman, two teachers and one clerk. Of these men, thirty-three were employed on the farm and in care of the stock and three in the orchards. They had four hundred acres of land under cultivation, raising corn, wheat, oats and potatoes; two hundred acres in hay and pasture land in addition for the cattle, of which they had eighty cows, thirty-five heifers, twenty-one horses, and sixty or seventy pigs. There were also several farms leased. In 1889-90 there had been one hundred and twenty men employed in farming the same quantity of land as was farmed in 1895.

The farm and other works at Economy were carried on by members of the society as long as there was a sufficient number of them to do so; but when their numbers decreased, hired laborers were employed, who were paid by the month, and furnished with houses and all necessaries of life, except clothing, until after Mr. Henrici's death; they were then still paid by the month, at increased wages, but were charged rent for their houses, and they furnished all their own necessaries themselves. By this change in the mode of payment, a large saving in expense was effected for the society.

All businesses carried on by the society outside of Economy were carried on by employes and superintendents not members of the society, under the control and general supervision of the trustees. While Mr. Lenz was one of the trustees, he superintended the farming and other businesses carried on at Economy, and the coal and railroad operations at Darlington, the lumber and oil business up the Allegheny, and was also a director and at one time president of the Little Saw Mill Run Railroad Company, and active in its management. Although often at Beaver Falls, he took but little part in the management of the businesses carried on there. Mr. Henrici superintended all the society's businesses there, and controlled their general management.

The result of these various industries, carried on by the society prior to 1890, was unfavorable for the society. As already stated, Mr. Duss first obtained about December 1st, 1891, a general knowledge that the liabilities of the society amounted to about $1,500,000; and it was not until the fall of 1892, that he fully learned its financial condition, through the report of Mr. James Dickson, whom he had employed as an expert accountant for that purpose as soon after December, 1891, as it was possible for him to do so. Mr. Henrici at first objected to the keeping of any general account books which would show the condition of the finances of the society, as never having been done before and as unnecessary; as, up to that date, there had been no general books of accounts kept, neither had there been any system or regular method of keeping the valuable papers, securities and documents belonging to the society. These were scattered in many places—some in the vault and some in desks and boxes at the Great House in Economy; others in the Economy Savings Institution at Beaver Falls, and others at Tidioute, Warren County, Pa.

After a long investigation by Mr. Dickson it was ascertained about November, 1892, that the direct liabilities of the Harmony Society on April 1st, 1892, were $393,502.56, which included its notes held in Pittsburgh, by the Bank of Pittsburgh, $142,000—by the Farmers Deposit National Bank, $60,600; by the Iron and Glass Dollar Bank, $88,958; by the Monongahela National Bank, $5,000, and in Philadelphia, by Powell & Company, $1,874.75; also notes to Hartman for $13,000, and to Valley Glass Company for $4,000; mortgages on its property in Leet Township, Allegheny County, for $35,340.65, and an account of the Economy Savings Institution. That the indebtedness of the Economy Savings Instituion, for which the society was liable as a partner in that firm, amounted to $1,081,456.02, and its quickly available assets to about $30,000, making the total liabilities of the society $1,474,958.58.

The assets of the Harmony Society at this date were:

600 shares stock of Point Bridge Company, par value	$ 15,000 00
386 shares stock of Tidioute Bridge Company, par value	19,300 00
2271 shares stock of Chartiers Block Coal Company, par value	113,500 00
2100½ shares stock of Little Saw Mill Run Railroad, par value..	105,025 00
500 shares stock of Union Drawn Steel Company, par value	50,000 00

417 shares stock of Beaver Falls Gas Company, par value	41,700 00	
483 shares stock of Tenth Street Bridge Company, par value	12,075 00	
70 shares stock of Allegheny National Bank, par value	3,500 00	
193 shares stock of Bank of Pittsburgh, par value	9,650 00	
270 shares stock of Beaver Falls Bridge Company, par value	27,000 00	
178 shares stock of M. & M. National Bank, par value	8,900 00	
27 shares stock of P., Ft. W. & C. R. R. Company, par value	2,700 00	
50 shares stock of Rochester National Bank, par value	5,000 00	
5170 shares stock of Monongahela Water Company, par value	129,250 00	
Shares stock Glenshaw Oil Company, par value	9,851 00	
		552,451 00
Bonds of Chartiers Block Coal Company, par value	$ 3,000 00	
Bonds of Point Bridge Company par value	13,000 00	
Bonds of Pittsburgh, Chartiers & Y. R. R. Company, par value	276,000 00	
Bonds of Little Saw Mill Run R. R. Company, par value	110,500 00	
		402,500 00
Beaver Falls Steel Works, afterwards sold for	$100,000 00	
Loan to Union Drawn Steel Company	18,750 00	
Account against P., C. & Y. R. R. Company	18,466 89	
Bieler real estate contract,	3,000 00	
Beaver Falls contracts, mortgages, etc.	127,500 00	
Meyers mortgage	28,922 00	
		296,638 89
Deposit in Farmers Deposit National Bank	$ 3,628 46	

Amounts brought forward:		
Stocks		$ 552,451 00
Bonds		402,500 00
Other properties, estimated value..		296,638 89
Balance in Economy Savings Institution	62,117 93	
Economy Savings Institution	28,000 00	
Beaver Falls File Works	26,431 00	
		120,172 39
Harmony Brick Works at Leetsdale.		
Economy Lumber Company at Economy.		
Economy Oil Company, at Economy.		
Economy planing mills at Economy.		
Real Estate.		
At Cannelton, afterwards sold for..	3,124 20	
At McKees's Rocks, afterwards sold for	1,640 00	
At Stowe Township, 8 acres, estimated	20,000 00	
At 32nd Ward, Pittsburgh, sold for	5,500 00	
In 23rd Ward, Pittsburgh, sold for	4,000 00	
In Collier Township, sold for	250 00	
In Leet Township, sold for	3,700 00	
In Warren County, sold for	67,989 29	
In Philadelphia, sold for	9,750 00	
In Michigan lands, sold for	10,736 04	
In Michigan lands, 2,000 acres, estimated	7,000 00	
In Rochester, Pa., estimated	3,000 00	
In New Brighton, estimated	2,500 00	
In Beaver Falls, lots and houses, Beaver Falls Water Company stock	*est.* 197,000 00	
		336,169 53
Land at Economy, 2,600 acres.		
Land in Leet Township		
		$1,707,952 31

Total par and estimated value of all assets of Harmony Society

on April 1st, 1892, excluding properties at Economy and Leet Township, $1,707,952 31.

At that time all above-mentioned stocks and bonds were held by banks as collateral security for notes, either of the Harmony Society or of the Economy Savings Institution, except the following, viz.:

600 shares stock Point Bridge Company, par value....	$ 15,000
386 shares stock Tidioute Bridge Company, par value ..	19,300
2,271 shares stock Chartiers Block Coal Company, par value	113,000
2,100 shares stock Little Saw-Mill Run R. R. Company, par value	105,052
500 shares stock Union Drawn Steel Company, par value	50,000
11 shares stock Beaver Falls Gas Company, par value,	1,100
30 shares stock Beaver Falls Bridge Company, par value	3,000
27 shares stock P., Ft. W. & C. R. R. Company, par value	2,700
50 shares stock Rochester National Bank, par value..	5,000
1,610 shares stock Monongahela Water Company, par value	40,250
Bonds of the Chartiers Block Coal Company, par value..	3,000
	$357,375

The stock of the Bank of Pittsburgh, although not formally pledged, could not be transferred or used until the whole debt owing to the bank was paid; and was thus practically held as collateral for the loan. The securities pledged as collateral were held by the Bank of Pittsburgh, the Farmers Deposit National Bank, the Iron and Glass Dollar Savings Bank, the Allegheny National Bank, the Monongahela National Bank, and the Bank of America of New York, and the State Treasury, as security for loans made by them to Mr. Henrici for the society, and to the Economy Savings Institution. In the fall of 1891 the Farmers Deposit National Bank was dissatisfied with its collateral, insisting on more or better collaterals. The Bank of Pittsburgh wanted the loans reduced. At the same time the State Treasurer had a deposit of $150,000 in the Economy Savings Institution, which owed him, in addition to that, about $13,000, which he wanted satisfactorily secured, or he would file his bonds.

The society, prior to April 1st, 1892, had, in addition to the $276,000 of bonds of the Pittsburgh, Chartiers & Youghiogheny

R. R. Company, 7,866 shares of its stock, as hereinbefore stated. This stock was very much reduced in value, and the bonds were second mortgage bonds, and unknown in the market. In the winter of 1891-2 the trustees negotiated with the Pennsylvania Company for the sale of the road to it, and finally sold their stock to it for $94,000, and received from it, in exchange for their old bonds new ones, guaranteed by the Pittsburgh, Cincinnati & St. Louis R. R. Company or the Pittsburgh & Lake Erie R. R. Company, which enabled them to sell the bonds before unsaleable for $240,000. These sales, with others of securities and real estate, which they were able to make, enabled them to pay off the debt owing by the Economy Savings Institution to the State, some of the indebtedness to the banks, and a part went into the Economy Savings Institution, and carried them on until the fall of 1892.

The most of the unpledged stocks held by the society were not readily saleable, and required time to dispose of them without great loss. The Point Bridge stock could not be sold on account of litigation between that company and the West End Passenger Railway Company in reference to the bridge; the stock of the Chartiers Block Coal Company and of the Little Saw Mill Run R. R. Company were then unsaleable. The others—except the stock of the P. Ft. W. & C. R. R. Company, the Monongahela Water Company, and the Tenth Street Bridge Company—were local stocks, not known in Pittsburgh and difficult to sell. Throughout 1892 there was a continued demand on the Savings Institution by its depositors, which rendered it necessary for the society to keep it supplied with money.

In the fall of 1892 the indebtedness of the Economy Savings Institution to its depositors had been reduced to about $915,000. It was also indebted to the Bank of America $60,000, for money loaned on its note. Notes of the society in the banks of Pittsburgh, amounting to $325,000, were yet unpaid, and the banks were pressing for payment; and all the assets of the society which were then available for payment, viz.: unpledged stock, 1,610 shares; of the Monongahela Water Company, 27 shares; of the P. Ft. W. & C. R. R. Company, and 483 shares of the Tenth Street Bridge Company, amounting in value, altogether, to about $75,000, at the prices for which they were afterwards sold. Mr. Duss being of opinion that the only way to preserve the property of the society from sale by the sheriff was to procure a loan on the security of its real estate, on such terms as would give it time to convert its securities and other assets into cash at a fair price, and thus enable it to pay off its indebtedness, both direct and indirect. And in October or November, 1892, he consulted with J. T. Brooks, Esq.,

vice-president of the Pennsylvania Company, as to how such a loan could be obtained, stating to him the condition of the affairs of the society, and that in his opinion a loan of $800,000 would be necessary to carry the society through its difficulties. Mr. Brooks advised him that it would be impossible to obtain a loan of that amount on the security, but afterwards informed him, that he could obtain a loan of $400,000. Upon this information the agreement dated December 20th, 1892, Exhibit No. 49 (hereinbefore quoted, pages 102 to 106), was prepared by counsel, and on that date explained to and executed by all of the members of the society—except Benjamin and Henry Feucht and their wives, as hereinbefore stated. But before the execution of this paper Mr. Brooks procured for the society a temporary loan of $102,000 from Mrs. McCullough, upon the securities of the society pledged to the Farmers Deposit National Bank, as collateral for the notes of the society held by it; and with this money the notes were paid and lifted. On December 21st, 1892, the mortgage for $400,000 to Harry Darlington, trustee, was executed and delivered as security for the loan of that amount then made by him to the society, payable in five years from date. With this money the mortgages on the Leetsdale property, amounting to $35,000, and the notes held by the banks in Pittsburgh were paid, and the securities held by them as collateral released.

Immediately after the death of Jacob Henrici, Senior Trustee, on December 25th, 1892, and the election of John S. Duss as his successor and of Samuel Sieber as Junior Trustee, the newspapers of Pittsburgh published news items stating that legal proceedings were about to be commenced by the Feuchts for the dissolution of the society and the winding up of its affairs. These publications were continued until the bill in equity against the society (Exhibit No. 15) hereinbefore referred to was filed on February 10th, 1893, by Benjamin and Henry Feucht and others, praying for a dissolution of the Harmony Society and a distribution of its assets. Notices of the filing of this bill were also published. It being generally known that the Harmony Society was the principal owner of the Economy Savings Institution, the publication of these notices and the reports of the difficulties of the society and of the bank caused a run upon the bank, which increased daily until February 10th, 1893, the day the bill was filed, when it was heaviest, and it continued until nearly all of the depositors were paid. On one day, February 10th, 1893, $117,110.03 were drawn from the bank by the depositors.

By the sale of securities, released from the banks as above stated, and also by temporary loans to the amount of $42,000 from the Farmers Deposit National Bank, obtained by the assistance of Mr.

Brooks, and from Mr. Brooks to the amount of $72,000, they succeeded in supplying the Economy Savings Institution with sufficient money to carry it through this run on it, without closing its doors. In May, 1893, it became evident to the trustees that the loan already obtained from Mr. Darlington was not sufficient for the purpose intended, and another loan of $100,000, payable three years after date, was obtained from him through the assistance of Mr. Brooks, for which a second mortgage on the same property was executed and delivered to him. After making this loan the trustees continued the sale of such of the stocks and bonds held by the society as they were able to sell at market prices, and such of the real estate of the society—outside of their Economy and Leetsdale properties—as they could sell, until, on January 1st, 1896, the debts for which the society was liable were reduced to $360,000, and a contingent liability for $11,000 of deposits in the Economy Savings Institution, as hereinbefore stated. $350,000 of this indebtedness was on the first Darlington mortgage. (Testimony of Dickson, page 1853; Duss, page 2567.)

And to pay this indebtedness the society had at that time, in addition to the property, assessed at $581,407, and two thousand acres of land in Michigan valued at $10,000, the following assets (see testimony of James Dickson, pages 1853 to 1858), viz.:

Rochester real estate	$ 3,000	
New Brighton real estate	2,500	
Leet Township, real estate, brick works, etc.	100,000	
Sewickley real estate	11,500	
Beaver Falls real estate	82,959	
Sundry items, real estate	3,766	
		$ 203,725 0

Personal Property.

Economy accounts	$ 6,150	
Stock of Point Bridge Company	15,000	
Stock of Chartiers Block Coal Company,	113,500	
Deposit in Farmers Deposit National Bank	9,169 47	
Economy items	22,991 49	
Accounts and notes	22,387 61	
Mortgages	40,094 08	
Beaver Falls mortgages	35,078 06	
		$ 264,240 71

In Economy Savings Institution		
Cash items	$ 431	
Mortgages	15,000	
Bills receivable	87,000	
		$ 102,431 34
		$ 570,397 06

During this time the amount paid into the Economy Savings Institution by the trustees of the Harmony Society, over and above all amounts drawn out by them, as shown by their pass-books with the bank (Exhibits Nos. 59 and 70) were as follows: On February 28th, 1891, the account of the society was overdrawn $28,661.46. Between that date and December 1st, 1891, the trustees paid into the bank over and above all amounts drawn out by them 53,867 80

Between Dec. 1st, 1891, and April 1st, 1892.....	30,168 70
Between April 1st, 1892, and Oct. 13th, 1892....	49,046 59
Between Oct. 13th, 1892, and Jan. 13th, 1893....	248,515 22
Between Jan. 13th, 1893, and Feb. 1st, 1893.....	208,098 50
Between Feb. 1st, 1893, and May 10th, 1893....	395,206 65
Between May 10th, 1893, and Jan. 1st, 1894....	17,828 16
	$1,002,731 62

On January 1st, 1894, the Savings Institution was indebted to the society for these advances $974,070.16. By January 1st, 1896, this indebtedness was reduced to $853,721.06, as shown by the same pass books.

During the time these payments into the Economy Savings Institution and on the direct liabilities of the society were being made, interest on the debts, the amounts required by the withdrawing members, the cost of maintaining Economy, the taxes and other expenses, had to be and were paid; and, together, amounted to a very large sum as shown by the statements of account hereinafter referred to.

The real estate of the society in Allegheny and Beaver Counties having been conveyed to the Union Company on April 11th, 1894, subject to the mortgages to H. Darlington, trustee, on which interest and $10,000 of the principal had been previously paid, the society afterwards loaned to the Union Company $119,740.43, and on June 13th, 1895, $90,000 was paid by the company to Mr. Darlington in satisfaction of his second mortgage; and on July

26th, 1895, $50,000 was paid by it to him on account of his first mortgage, reducing the debt secured by these mortgages to $350,000.

Exhibit No. 76, which is a condensed statement of the cash received and disbursed by John S. Duss from April 1st, 1892, to January 1st, 1896, (testimony, page 1895) as follows:

Cash Memorandum.

Loan Brooks	$ 400,000 00	
Loan Brooks	100,000 00	
Loan Brooks	102,000 00	
Loan Brooks	42,000 00	
Loan Brooks	30,000 00	
Stocks and Bonds	766,912 00	
Real Estate, Memorandum	243,842 00	
Beaver Falls Steel Co.	100,000 00	
Union Drawn Steel Co., Cash part	50,000 00	
	$1,834,754 00	
Dividend and Coupon Acct.	63,862 74	
Union Drawn Steel Co., Loan	18,750 00	
P., C. & Y. R. R., Special	18,466 89	
Eclipse Bicycle Co., Cash	10,000 00	
Beeler, R. E., Contract	3,000 00	

Disbursements.

Loan Brooks on Mortgage		$ 50,000 00
Loan Brooks on Mortgage		100,000 00
Loan Brooks on Mortgage		102,000 00
Loan Brooks		42,000 00
Loan Brooks		30,000 00
Retiring Members, Cash		66,870 42
Maintenance of Economy		128,212 02
Interest Account		59,777 36
Tax Account		8,261 86
Tax Account		2,235 50
Expense Account		73,351 21
Old Note Account		354,119 20
Economy Savings Institution		792,192 13
		$1,809,028 70
Economy Savings Institution		130,037 35
	$1,948,653 63	$1,948,066 05
Sundries not specified		587 58
		$1,948,653 63

Exhibits Nos. 77 and 79 are statements prepared and proven by James Dickson (Testimony, pages 1897-8), which show the receipts and expenditures of the Harmony Society from April 1st, 1892, to December 31st, 1895, and of the Union Company from January 14th, 1894, to December 31st, 1895; and the financial condition of each at the last date, Exhibit No. 77, is as follows:

Account of John S. Duss, trustee, Harmony Society, covering the period from April 1st, 1892, to December 31st, 1895, concurrent with accompanying account of Union Company.

Debits.

1892.		
April 1—Stock of Economy Savings Institution		$ 360,000 00
April 1—Other stocks		545,700 00
April 1—Bonds		402,500.00
April 1—Industrials		320,503 52
April 1—Economy Disbursement account		18,873 24
April 1—Economy Sav's. Inst., special account	28,895 83	
April 1—Beaver Falls Car Works, special account	26,431 70	
		55,327 53
April 1—P., C. & Y. R. R. account		18,466 89
April 1—Union Drawn Steel Co. loan account		18,750 00
April 1—Bieler real estate contract		3,000 00
Beaver Falls mortgage, contract and judgments		127,805 17
April 1—Myers mortgage		28,922 25
April 1—Deposit balance in E. S. Inst.		62,117 93
April 1—Deposit balance in F. D. National Bank		2,623 46
Real estate items, "B,"		1,010,191 78
Part of real estate sold—part transferred to Union Company—leaving $3,766.01 on hand December 31st, 1895.		
Michigan land sales		10,418 63

Additional Beaver Falls mortgages, contracts and judgments	2,827 98	
Temporary credit, Cutlery Company	10,000 00	
Temporary bills payable	8,512 74	
Additional temporary credits	6,363 12	
Profit accounts, "C,"	348,439 41	
Temporary loan note, No. 38, Farmers D. N. Bank	10,000 00	
Temporary loan note, No. 39, Farmers D. N. Bank	12,000 00	
Temporary loan note, No. 42, Farmers D. N. Bank	10,000 00	
Temporary loan note, No. 63, Farmers D. N. Bank	10,000 00	
Temporary loan note, No. 60, Brooks	102,000 00	
Temporary loan note, No. 70, Brooks	42,000 00	
Temporary loan note, No. 72, Brooks, per F. D. N.	30,000 00	
Mortgage, Brooks	400,000 00	
Mortgage, Brooks	100,000 00	
Credits.		
Payments Farmers D. National Bank, loan, No. 38		$ 10,000 00
Payments Farmers D. National Bank loan No. 39		12,000 00
Payments Farmers D. National Bank loan, No. 42		10,000 00
Payments Farmers D. National Bank loan, No. 53		10,000 00
Payment Brooks loan, No. 60		102,000 00
Payment Brooks loan, No. 70		42,000 00
Payment Brooks loan, No. 72		30,000 00
Shrinkage stocks and bonds		62,652 47
Shrinkage stocks and bonds		22,800 00
Interest		69,121 79
Expense account		70,866.30
Insurance account		170 00
Tax account		11,018 87
Maintenance of Economy		261,522 68

Shrinkage, Beaver Falls Steel Works			162,253	28
Shrinkage, Beaver Falls Real Estate			63,025	00
Shrinkage, Western File Co. Real Estate			61,194	68
Shrinkage, Glenshaw Oil Co.			9,851	52
Shrinkage on stock Economy Savings Inst.			360,000	00
Payments:				
L. Power & Co., note	$ 1,874	75		
Hartman, notes	13,600	00		
Valley Glass, note	4,000	00		
Bank of Pittsburgh, note	142,000	00		
Farmers D. N. Bank, note	60,600	00		
Iron and Glass D. S. Bank, note.	88,958	00		
Economy accounts payable	2,685	90		
Leetsdale mortgages	35,350	55		
Economy S. Inst., special	39,383	36		
Little Saw Mill Run stock, mem.	50	00		
Monongahela Nat'l Bank, note	5,000	00		
			$ 393,502	56
Payments to retiring members, cash	68,870	42		
Payments to retiring members, R. E.	20,000	00		
			86,870	42
Old debt accounts	14,083	18		
Less old debts collected	12,377	31		
			1,705	87
Beaver Falls real estate, expenses	15,656	95		
Beaver Falls Est. Com's.	7,145	27		
	$ 22,802	22		
Less Beaver F. Est. revenue	10,278	92		
			12,523	30
Forward	$4,076,643	65	$1,865,078	74
Credits.				
Life insurance paid			6,077	10
Mortgage adjustment as follows:				
Cash paid by Duss and Riethmueller, trustees	10,000	00		
Transferred to Union Company	490,000	00	500,000	00

Balance in Economy Savings Institution	1,097,731 14	
Not collectable	244,010 98	853,721 06

On Hand.

Industrials not yet closed out	54,019 60	
Beaver Falls mortgages and judgments	40,964 08	
Other mortgages	35,078 06	
Real estate	3,766 01	
Accounts and notes	22,387 61	
Loan to Union Company	119,740 43	
Economy disbursement account	21,991 49	
Stock in cash 5,000 / Union Company, real estate 395,000	400,000 00	
Stock Chartiers Block Coal Company	113,550 00	
Other stocks	21,100 00	
Patent right	10,000 00	
Deposit Farmers Deposit National Bank	9,169 47	851,766 75
	$4,076,643 65	$4,076,643 65

Exhibit No. 79 is as follows:

"Account of John S. Duss, president of the Union Company, covering the period from January 17th, 1894, to December 31st, 1895. Concurrent with accompanying account of Harmony Society.

Debits.

1894.		
Jan. 17—Cash capital, Union Company	5,000 00	
Real estate, Union Company	395,000 00	
		$ 400,000 00
Mortgage liability from Harmony Society to Darlington, trustee.		490,000 00
Loan from Duss and Riethmueller		119,740 43
Coal royalty	85 28	
Oil bonus	1,050 00	

Oil sales		4,425 05	
Gas well rental		365 00	
		5,925 33	
Less paid for gas wells		5,359 81	
			585 52
Rent account			66 25
Bills payable			2,000 00
Credits.			
1895.			
June 13—Paid on mortgage			90,000 00
July 26—Paid on mortgage			50,000 00
Interest on mortgage			45,863 34
Expense account			2,484 91
Insurance account			538 66
Tax account			286 64
Beaver Falls R. E. Expense account		5,878 50	
Beaver Falls R. E. commission account		810 00	
		$ 6,489 00	
Less Beaver Falls rents		5,599 25	
			889 75
Beaver Falls R. E. account		$ 613,450 00	
Beaver Falls File Works (all sold	$ 88,875 00		
Less	52,675 00		
		36,200 00	
New Brighton R. E.		2,500 00	
Rochester R. E.		3,000 00	
Leetsdale R. E.		58,500 00	
Sewickley R. E.		11,500 00	
Beaver Falls R. E.	$ 91,450 00		
Less	8,491 00		
		82,959 00	
Beaver Falls water power		14,200 00	822,309 00
		$1,012,372 30	$1,012,372 30

The foregoing is a statement of the principal facts in evidence, and of all the agreements made by the members of the society with each other since the agreement of August 12th, 1847. There are other facts in evidence, however, which will be stated here-

after, when considering the question of the abandonment of the purposes of the society.

The first part of the second question submitted to the master, and hereinbefore stated, is:

> "Has the Harmony Society been dissolved by the common consent of its members?"

The only averment in the bill of a dissolution by common consent is contained in the twenty-sixth paragraph, and is as follows:

> "That for some time past the members of said Harmony Society have been retiring therefrom and have received the amount of their interest in said association in the land or month, or both, the land being set apart in severalty to them, and have released all their rights and interests in said association in consideration of such payment or conveyance to them, and that by said retirement and withdrawal the membership of said association has been reduced to the persons hereinbefore named members, that by common consent this association has ceased to exist as an association."

The averment is not that the association has been dissolved by the common consent of its *members*, but that by common consent it has ceased to exist. It is admitted in the answer that the membership has been reduced by death and withdrawals from time to time, since its organization, but all the other averments of the paragraph are denied.

Although the articles of association have provided for the admission, and recognized the right of withdrawal of members on certain conditions, none of them have fixed any minimum number as requisite for the maintenance of the society. Having already found that the remaining members of the society still occupy their property at Economy, still maintain their organization as the Harmony Society, as provided in the agreement of August 12th, 1847, and that the trustees and elders still continue to attend to its affairs, the master finds that the society has not ceased to exist by reason of the reduction in the number of its members, as alleged in the bill.

But the question submitted is: "Has the society been dissolved by the common consent of its members?"

The society was formed and continued by written articles of association, agreed upon and signed by all the members—all of which, from that of 1805 to that of 1894, have already been quoted. No other agreements between the members than those quoted have been shown. None of these articles contain any

agreement of, or provision for dissolution, but all recognize the society as continuing and intending to continue. The contracting clause of the agreement of March 8th, 1827 (ante page 14), is as follows:

> "Therefore, be it known to all whom it may concern, that we, the undersigned citizens of the County of Beaver, in the Commonwealth of Pennsylvania, do severally and distinctly, each for himself, covenant and agree to and with George Rapp and his associates as follows:"

And in the 4th and following articles it is:

> "In consideration of the premises, the said George Rapp and his associates do by these presents adopt," and "The said George Rapp and his associates further agree," &c.

It has been already shown (ante page) that Rapp's associates were those who joined in the agreement, the members of the society.

In the agreement of 1836 (ante page 22) it is:

> "We, the undersigned, do hereby severally enter into, covenant and agree with each other as follows:"

And in that of August 12th, 1847 (ante page 29), it is:

> "We, the undersigned, surviving and remaining members of the Harmony Society, and constituting the same, do severally and distinctly, each for himself, covenant, grant and agree to and with all the others thereof, and with those who shall hereafter become members, as follows:"

These agreements have been reaffirmed and continued in all those subsequently entered into by the members, and they are contracts between each individual member, on the one part, and the society or association on the other part, that cannot be cancelled or set aside by the parties to them without the consent of all. Each individual member has rights under the contract—among others that of maintenance in support out of, and enjoyment of the benefits of the common property—which cannot be taken from him by the others without his consent. A dissolution of the society would deprive each member of all the rights and privileges which he has under the contracts. Therefore the society cannot be dissolved by consent without the consent of all the members —not of a majority, but of all who at the time are members. The burden of showing a dissolution of the society by the consent of

the members is upon the plaintiffs, but they have offered no evidence of such consent on the part of the defendants, the present members. The resolutions adopted by the members of the society on February 13th, 1893, in relation to the bill of Benjamin and Henry Feucht and others (hereinbefore quoted, page 108), and the action of all the present members in resisting the present bill, show that they have not consented to the dissolution of the society.

Although the plaintiffs have not shown that the defendants, members of the society, have at any time directly consented to its dissolution, they have claimed in their arguments, that by the agreements of December 20th, 1892 (Exhibit No. 49, hereinbefore quoted, page 102), authorizing the trustees to sell or mortgage the real estate of the association, and of April 11th, 1894 (Exhibit No. 80, hereinbefore quoted, page 112), authorizing the conveyance to the Union Company, were such dispositions of the property as amounted to a dissolution by common consent of its members. But these agreements themselves, and the testimony of Hon. Henry Hice (Testimony, pages 1565 to 1567, 1577 and 1950 to 1952), and of J. T. Brooks, Esq. (Testimony, pages 1415 to 1427 and 1435, 1436), show that the execution of these agreements, and the mortgages and conveyances made in pursuance of them, were not for the purpose or with the intention of dissolving the society, but for the purpose of preserving its existence and protecting its property. This is not such common consent of its members as is intended in the question submitted. The common consent must be given with the intention and for the purpose of effecting the dissolution of the society, and understood by the parties to be for that purpose, and not for something else.

The master, therefore, finds that the Harmony Society *has not been dissolved by the common consent* of its members.

The second and last branch of the question submitted is:

> "Has the society been dissolved by the abandonment of the purposes for which it was founded?"

The best evidence in the case of what were the purposes for which the society was founded is contained in the agreements of March 9th, 1827 (quoted ante, page 13), which is substantially the same as that of February 15th, 1805 (ante, page 6), of October 31st, 1836 (quoted ante, page 19), and of August 12th, 1847 (ante, page 28). These three agreements are all contained in Exhibit No. 18, and formed what is called by the witnesses the "Constitution" of the society. This constitution was signed by every member of the society, either on the dates of the agree-

ments or upon their admission as members, and was the only promise or agreement the members were called upon to make, or did make, to entitle them to all the rights and privileges of members of the society.

The ceremony of admission is thus described by Hon. Henry Hice, who was present many times at the admission of members, in his testimony, pages 1608 and 1667:

> "Q. Judge, you have identified different pages of Exhibit 18; were you present when different members were introduced into the society? I wish you would tell us what the ceremony for the admission of members was.
>
> "A. Well, there was no ceremony, properly speaking, connected with it. Those parties signed, usually, in the assembly room in the Great House at Economy; those Articles of Association were read over and explained to the party, usually read in English. I remember, myself, of reading them in English, not in all cases; but they were read in German, and most of them were written in German as well as in English. They were read in German as well as in English. They were read in German, and the parties were asked if they understood those various articles and their putport and the purposes, and if they would express themselves as understanding them, then they were asked if they agreed to sign those articles and become members of the society by doing so. Upon expressing their desire to do so, they signed those statements, which were prepared, and I subscribed my name as a witness to their signatures. That is all there was of it.
>
> "Q. Was there any pledge or promise made by incoming members, except their signatures, to these articles of constitution?
>
> "A. I can only state, gentlemen, as to what occurred at the time these signatures were made, at the time I witnessed these signatures. I observed pretty closely all that occurred, and there was nothing exacted in the shape of a pledge, nothing more than what resulted by the signing of their names to those articles. I was present on several occasions when members were admitted, when my name appears there as a witness. These are the only occasions."

And on his cross-examination, page 1667:

"Q. You said that no pledge was given by incoming members of the Harmony Society when they signed the constitution; but you did not mean to state or have it inferred that the object, the character and general rules of the society were not fully explained and recognized by members before they signed the paper?

"A. Well, all I can say in relation to that is this: I was present at different times when members were received into the society. The only thing I saw or that I heard in the way of a pledge or obligation on the part of members was what was contained in those Articles of Association."

The statement spoken of by Judge Hice in his testimony as being prepared and signed by the members and by him as a witness is in the following form:

"Be it known to all whom it may concern, that the foregoing documents contained in this book, signed by the members of the Harmony Society on the 9th day of March, 1827, on October 31st, 1836, and on August 12th, 1847, have all been read to us and understood by us, the undersigned, and after a full consideration of their contents, we have this day become parties to same, to all intents and purposes therein contained."

The foregoing testimony of Judge Hice was uncontradicted, and was corroborated by that of Henry Feucht, pages 159, 220 to 244, and 302 to 305; of Julius Stickel pages 391, 435 to 441, and 511; of Moritz Fredericks, 710—witnesses for the plaintiffs—and of Samuel Sieber, pages 2373-4; of John Duss, page 2482; of Fredericka Muntz, pages 2099, 2100; and of Maria Diem, page 1400—witnesses on the part of the defendants. And there was no evidence that any other promise or pledge was ever required of or given by any member than the signing of these written agreements in evidence.

The preamble of the agreement of March 9th, 1827, is as follows:

"WHEREAS, By the favor of Divine Providence an association or community has been formed by George Rapp and many others, upon the basis of Christian fellowship, the principles of which being faithfully derived from the sacred Scriptures, include the government of the patriarchal age, united to the community of property, adopted in the days of the apostles, and wherein the simple object sought is to approximate, so far as human imperfections may allow, to the fulfillment of the will of God by the

exercise of those affections and the practice of those virtues which are essential to the happiness of man in time and throughout eternity.

"AND, WHEREAS, It is necessary to the good order and well being of the said association that the conditions of membership should be clearly understood, and that the rights, privileges and duties of every individual therein should be so defined as to prevent mistake or disappointment on the one hand, and contention or disagreement on the other."

Therefore the subscribers, each for himself, covenanted and agreed to, and with George Rapp and his associates:

1st. They conveyed all their property to George Rapp and his associates, for the benefit and use of the association.

2nd. They agreed to submit to the laws and regulations of the community, to obey the superintendents thereof, and to labor for the community.

3rd. Not to claim any compensation for their services, but that all they did should be considered voluntary service for their brethren.

4th. In consideration of which they were adopted as members of the community, entitled to attend all religious meetings, and both they and their families to receive all necessary instruction.

5th. They and their families were to be maintained and supported, both in health and sickness, as long as they remained in the society.

6th. In case of their withdrawal from the society the value of the property brought into it by them should be returned to them without interest, in one, two or three yearly payments.

By the first article of the agreement of October 31st, 1836, the sixth article of the agreement of March 9th, 1827, was annulled, and all the others declared to remain in full force.

The agreement of August 12th, 1847, as stated in its preamble, was entered into because, in consequence of the death of George Rapp, it had "become necessary to the good order and well-being of the association that some plan should be agreed upon to regulate its future affairs, promote its general welfare, and preserve and maintain it upon its original basis." The first article of this agreement, recognized, re-established and continued the agreement of 1827, except its sixth article, and the agreement of 1836, except as affected by the death of George Rapp, or altered by the agreement. The whole of this agreement is taken up in providing for the appointment of certain officers to exercise the powers and perform the duties theretofore exercised and performed by George

Rapp, as the head or chief of the society, without changing its purposes.

The object and purpose of those uniting in these agreements, as shown by the agreements and the preamble of that of 1827, were the formation, upon the basis of Christian fellowship; that is, obedience to the command of Christ, "Love thy neighbor as thyself," of an association wherein all property should be held for the common benefit, and all members and their families should be supported and maintained during health and sickness out of the common fund, derived from the contribution by the members of the individual property of each, and of their labor and services, which they should render to the society, under the direction and management of their superintendents, for the common benefit; the form of government to be patriarchal; that is, all control and authority over the property of the community and of the conduct of the members to be vested in the chief or head, as in the father of a family; and the rule of conduct of the members to be obedience to the directions of the head and of the officers appointed by him, and the exercise of those affections and the practice of those virtues essential to the happiness of man in time and eternity. What those affections and virtues are is not otherwise stated. No particular form of religious belief was required of the members in any of the agreements made, nor was there any evidence to that effect.

The declarations contained in the first preamble to the agreement of March 9th, 1827, are very general and indefinite; while the provisions of the agreement are clear and explicit, and are stated in the second preamble to the agreement of 1827, to be intended to so define the rights, privileges and duties of the members that they should be clearly understood, and to prevent mistakes or disappointment. The agreements themselves, therefore, show the principal purposes of the association. As shown by these agreements, they are the maintenance and support of the members of the society and their families out of the common fund derived from the contribution by the members of all their property and their labor and services to the society for the common benefit. The services to be rendered under the direction and management of their superintendents. And all control and authority over the property of the community and of the conduct of the members to be vested in the head of the community, and the rule of conduct of the members to be obedience to the direction of the head and the officers appointed by him.

If the society cannot be dissolved by the consent or agreement of a part only of its members, for the reasons already stated, for the same reasons the abandonment of its purposes by a part only of its members cannot cause its dissolution, thus depriving the other

members of their rights under their contracts without their consent. Under the terms of the agreements, if any of the members are dissatisfied, or do not wish or refuse to carry out the purposes of the society, they may withdraw or they may be expelled from the society, and the remaining members would still constitute the society and be entitled to all its benefits and advantages. This has been recognized many times in this society, especially in the case of the withdrawal in 1832 of 175 members, under the leadership of Count de Leon, mentioned in the ninth paragraph of the bill. The principle is also recognized in many of the authorities hereinbefore cited.

The abandonment of the purposes of the society, to cause a dissolution must, therefore, be an abandonment by *all* of its members.

In the last section of the third paragraph of the bill it is alleged that the Harmony Society "has become dissolved, as hereinafter stated"; and in the twenty-fifth paragraph it is charged—

> "That recently said Harmony Society has become dissolved as aforesaid; that all of its purposes and practices established as aforesaid by the founders of said society, and by the ancestors of your orators have been abandoned.

In the seventh paragraph of the bill it is averred—

> "That at the death of Lenz," which occurred on January 22nd, 1890, "and for some time thereafter the said society was solvent, said possessions or trust property amounted in value upwards of $4,000,000. That all of said possessions *up to and until* the grievances hereafter complained of were scrupulously used for the benefit of all its members, and for the advancement, benefit and continuation of the society."

The eighth paragraph of the bill avers:

> "That the Harmony Society, from the period of its inception until a recent date, adhered rigidly to its plan of government, and became illustrious and highly respected by its sincere advocacy of the equality of man, its espousal of the highest principles of Christianity, and its honesty and benevolent admiration of all public functions, whether in the management of its internal affairs or in its many transactions with the citizens of Western Pennsylvania."

In the tenth paragraph it is said,

> "That during the year 1890, after a long period of prosperity and complete harmony in said society, began a second conspiracy," etc.

From these averments in the bill it is evident that if the purposes of the society have been abandoned, and the society thereby dissolved, as alleged in the bill, such abandonment must have occurred between the death of Lenz, in January, 1890, and the filing of the bill, viz., June 27th, 1894.

There was no abandonment of the purposes for which the society was formed, as set forth in the agreement of 1827 (hereinbefore quoted, page 13), contained in any of the agreements signed by the members of the society, and which are all hereinbefore quoted in full; on the contrary, that agreement, except its sixth section, is expressly reaffirmed and continued in the agreement of October 31st, 1836 (page 19); of August 12th, 1847 (page 28); of April 30th, 1890 (page 92), and of December 20th, 1892 (page 102), and is recognized as existing and in force by the provisions of that of April 11th, 1894 (page 112). There has, therefore, been no abandonment of the purposes of the society by the joint action of all of its members acting as a society or association.

The matters averred by the plaintiffs in their bill, as showing an abandonment of the purposes of the society and effecting its dissolution, are set forth in the tenth to the twenty-sixth paragraphs of the bill.

The ninth paragraph avers that there was, in 1831, a conspiracy to dissolve the association and get possession of its wealth by one Count de Leon and others. The whole of this paragraph is denied in the answer, except that in 1832, a number of the members withdrew from the society, and, with one Count de Leon, settled at Phillipsburg, Beaver County, Pa. The plaintiffs offered no evidence in support of this paragraph; and the only evidence in relation to it is Exhibit No. 82, offered in evidence by the defendants, being the agreement of withdrawal of 175 members of the society in 1832, which has been already referred to on page 18, and which does not prove the charges made in this paragraph—further than is admitted by the answer. The master, therefore, finds that the matters averred in this paragraph—and not admitted in the answer—are not proven; and that if they had been true, are immaterial in this case, having occurred long before it is alleged any abandonment of purposes or dissolution occurred.

The 10th, 11th and 12th paragraphs of the bill together, charge a conspiracy on the part of J. S. Duss, one of the defendants, to admit Dr. Cyrus Teed and the members of his society, called the Koreshan Society, presided over by him, to membership in the Harmony Society, and to finally turn over to them all the property of the Harmony Society; and the manner in which this result was to be attained.

As to the matters alleged in these paragraphs, the master finds the following to be the facts, viz.:

John S. Duss, as already stated (page 91), came to Economy on July 9th, 1888, at the request of Mr. Henrici, Senior Trustee, to take charge of the school there. His history prior to that time, and up to the time of his joining the society in 1890, as given by himself (pages 2473 to 2482 and 2655 to 2661), and uncontradicted by any evidence is, that he was born in Cincinnati on February 22nd, 1860; came to Economy with his mother, Mrs. Caroline Duss, when he was two years old, and remained there until he was thirteen; then went to the Soldiers' Orphan School at Phillipsburgh until he was sixteen; then returned to Economy in the spring of 1876; went to Germany with his mother that year, and returned in the fall of same year; remained at Economy until he went to Mt. Union College in July, 1879; upon leaving college he went to the State Reform School at Topeka, Kansas, and was employed there as a teacher for some time; the climate affecting his health, he returned to Ohio, and was married there to his present wife, Mrs. Susie C. Duss, on July 17th, 1882, and was engaged in the business of selling musical instruments. He went to Buroak, Kansas, in 1883, and was in business there with his brother-in-law for a year; bought a stock farm in Nebraska and went to it in 1884, and remained there until, on the request of Mr. Henrici, he returned with his wife and children to Economy in 1888, to take charge of the school there, and was immediately employed by the trustees as school teacher. He had not been from his youth up a mendicant or servant, as alleged in the bill, except as all employes are technically servants.

During all this time his mother, Mrs. Caroline Duss, remained continuously at Economy until her death in April, 1891, with the exception of a few months in 1869; less than three months in 1876, when they went to Germany, and a month or two in 1885. From 1868 she received a pension on account of her husband's services in the Union Army. She was admitted to membership in the society on February 15th, 1887. Prior to that time she had been in the employment of the society.

The matters alleged in the 11th paragraph of the bill are only partly true. The averment that Duss, with the assistance of confederates, began his efforts to obtain admission to the society is denied in the answers and is not true. As hereinbefore stated, he consented to become a member of the society upon the request of the trustees, Henrici and Lenz. His mother, Mrs. Caroline Duss, then a member of the society, was appointed housekeeper for Mr. Henrici, upon the death of Miss Gertrude Rapp, in December, 1889;

but the averment that he had, by intrigue, obtained this result, thus gaining ascendancy over the will of the aged and decrepit trustee, is denied in the answers, and there was no evidence to support it. On the contrary, the testimony of J. T. Brooks (page 1452), Henry Hice (page 1599) and John Reeves (page 1725), as to the character of Mr. Henrici, shows that at this time, although aged, he was not decrepit, and was not weak or easily influenced, but of a very strong and stubborn will, not yielding himself, but influencing and controlling others with whom he came in contact. That Kirschbaum, Wirth and Lenz all died suddenly and within a short time, it is true; but the averment that the remaining members of the Board of Elders were demoralized and wholly under the dominion of Duss, is denied in the answers, and wholly unsupported by any evidence. That Duss, Nicklaus and Fischern were chosen by the Board of Elders to succeed the deceased members is true; but that they became members of the society by their election as members of the Board is not true. As hereinbefore found as a fact, they were elected members of the Board of Elders, and, after having signed the constitution of the society, they were elected members of the Board of Elders. This was in strict accordance with the usages of the society and with the provisions of the third article of the agreement of 1847, declaring the powers of the Board of Elders. The provisions of that article are as follows, viz.:

> "The Board of Elders shall have and exercise the following powers, to wit: * * *
>
> "3rd. To admit new members into the society, and to expel them therefrom. New members, when admitted, shall subscribe this agreement as in evidence of their membership and of the rights acquired by, and the duties imposed upon them."
>
> "To fill all vacancies in the Board of Elders occasioned by the death, resignation or removal from office of its members and their successors, and so, as often as a vacancy shall occur: to fill all vacancies in the office of trustee, when either or both of the said trustees or their successors shall die, resign his office or be removed from the same, and this as often as a vacancy shall occur."

It was objected by the plaintiffs that the election of these parties to membership was void, and that they never became members because they had not served a probation of a year before being admitted to membership. There is no provision in any of the agreements forming the constitution of the society requiring any period of probation before admission to membership of the society. But

the practice of the society has been that any person, not known to the Board of Elders, or with whom they were not sufficiently acquainted to judge of his character, or not altogether satisfied that he would be a proper person to admit to membership, he would be required to remain with the society for a year on probation, that they might become acquainted with his character, and the applicant become acquainted with their principles and manner of life; but if the candidate for admission had become known to them, either by residence or employment in Economy, and they were satisfied with his character, no probationary period was necessary or required. (See testimony of Julius Stickel, p. 385, Moritz Fredericks, p. 688; Caroline Mounts, pp. 2107-8; Samuel Sieber, p. 2375, and John S. Duss, page 2596.) John S. Duss, as has been already stated, had spent a great part of his life in the society, and had been employed there as teacher for nearly eighteen months before his admission as a member; and the others, admitted with him, had also been in the employment of the society at Economy for some time previous to their admission, and it is to be presumed that the Board of Elders were sufficiently acquainted with their characters to justify their admission without probation. The election and admission to membership of these persons was, therefore, regular and legal.

The consent of the other members of the society to the election of any member to the Board of Elders, or to the admission of new members, was not necessary and was never asked. That certain persons were about to be, or had been, admitted to membership was sometimes announced in the church, or at a meeting of the members; but it was not always done, and was not required by the constitution. That the persons above named were about to be admitted to the society was generally known to the members some time before their admission, and the averment that it was objected to by every influential member of the society is denied in the answers, and there is no evidence that there was any objection by any member, influential or otherwise, either to their admission to membership or their election to the Board of Elders. It is also true that a few days after Mrs. Susie C. Duss was, on February 13th, 1890, admitted to membership, along with fifteen others, among whom were Henry Feucht, Benjamin Feucht and Julius Stickel and their wives, Margaret Feucht, Rebecca Feucht and Pauline Stickel, and Bertha Geratch, Stickel's stepdaughter. Exhibit No. 18, page 109.)

It is also true that Ernest Woelfel, Junior Trustee, died in July, 1890, and that John S. Duss, a member of the Board of Elders, was elected by that Board as trustee in his place. This also was in ac-

cordance with the provisions of the seventh paragraph of Article 3 of the agreement of 1847, above quoted, and of the fourth article of the same, which is as follows:

> "We do further ordain and establish a Board of Trustees or agents for the exclusive management of the external business and affairs of the society, which Board shall consist of two persons, *who shall be members of the Board of Elders*, and their successors, who shall be appointed as hereinbefore provided."

Only members of the Board of Elders were eligible to the office of trustee.

The whole of the twelfth paragraph of the bill is denied in the answer, and the plaintiffs have produced no evidence in support of its averments, except the testimony of Henry Feucht, that the large and expensive residence spoken of in the bill was a twenty-six room house, furnished with a steam heater and electric lights, and, "as we understood at the time, was built for Cyrus Teed." (Testimony, page 182.) It appears, however, from the evidence on the part of defendants, that a Mrs. Emertz, a member of the Teed society, visited Economy in 1889 for a few days, spending her time with Mr. Henrici; that in July, 1891, she, while on her way from Philadelphia to Chicago, stopped at Economy, and on the invitation of Mr. Henrici, remained as his guest at the Great House for about three weeks. That having understood at that time that her opinions and doctrines had been misrepresented to the members of the society, she insisted on Mr. Henrici's allowing her to explain them to the Board of Elders. She was not allowed a hearing before the board, but on the evening of the last Sunday of her stay, she was allowed by Mr. Henrici to make an address to the society in explanation of her beliefs. But she did not say that Teed was the true Messiah, or would soon be in their midst. (See her testimony, pages 1227, 1231½, 1239, 1240.) And there is no evidence that Duss made the remarks alleged in the bill.

The erection of the large residence mentioned in the bill was first proposed to the Board of Elders by Mr. Fischern, one of the Board, who had charge of the saw mill and planing mill, then erected or being erected a short distance below the village of Economy, at what was called French Point, for a boarding house for the hands employed there. This was opposed in the board by Mr. Duss, but it was decided by the board that it should be built. The plans for it were prepared by Mr. Creese, the builder, and by him submitted to and approved by Mr. Henrici and Mr. Duss. The building was commenced in the fall of 1890 and completed in the spring of 1891, under the supervision of Mr. Henrici. It was not intended for,

and has not been used since, for any other purpose than as a boarding house for the employes of the planing and saw mills at French Point. It was not understood by or reported among the members of the society that it was built for Cyrus Teed or his society, and there was no rebellion or protest among the members on account of the house or its intended use. Such report was not heard of until such a charge was made in the bill in equity, filed by the Feucht family against the society in 1893. (See Sieber's testimony, pages 2372 and 2385 to 2387.)

Henry Feucht was not expelled from the society as the result of his active opposition and protest against the occupation of this house by the Teed Society, as alleged in the bill. Such use of the house not having been intended or proposed, no opposition to it was made by Feucht or others. But he was expelled from the society by a resolution of the Board of Elders, adopted April 25th, 1892, a year after this house had been completed and occupied as a boarding house, because, as stated in the resolution (see testimony, page 248), from the time of his re-admission into the society, he had kept it in a continual state of turmoil; had not kept his repeated promises to refrain from intrigues and other things giving rise to disturbances; had kept on injuring the trustees and Board of Elders to set them against each other, and, it was said, had used the public press to defame the trustees and the Board of Elders. This expulsion was not at the instance of Duss, but of John Scheid, one of the elders, and was not arbitrary; but after Feucht had been several times called before the board and reprimanded for his conduct, and they had found that he had entirely disregarded their admonitions (see testimony of J. S. Duss, pages 2539 to 2552, and 2700 to 2719). When examined as a witness, in reference to this expulsion, Feucht did not claim that his expulsion was on account of his opposition to the proposed use of the house, alleged in the bill. (See his testimony, pages 162 to 166, and 246 to 253.) After securing a copy of this resolution, Feucht procured the signatures of fifteen members of the society, including his wife, his sister, his brother and his wife, to protest against his expulsion. (Exhibit No. 13.) He also employed counsel, and threatened legal proceedings if not restored to membership. The Board of Elders, fearing the injurious effect litigation might have on the credit of the society in the then condition of its finances then becoming known to them, on the advice of Mr. Duss and Mr. Hice, on August 1st, 1892, rescinded the resolution of April 25th, 1892, and restored him to full membership and "to all his rights and privileges as a member of said society." (Exhibit No. 14, and testimony p. 165.) After his restoration to membership he still continued to disregard

the authority of the Board of Elders and to disobey their orders (see testimony of Feucht, p. 293; of Sieber, 2866-7, and of Duss, pp. 2708 to 2711), and on February 10th, 1893, soon after the death of Mr. Henrici, filed his bill for the dissolution of the society, hereinbefore referred to.

There was no evidence whatever of the character of Cyrus Teed, or of the members of his society or of what were the doctrines taught by him, or of the principles of his society.

All the other averments of this paragraph of the bill are entirely unsupported by any evidence, and are denied in the answers; and the master finds that they are not true, and that there never was any such conspiracy as is charged in the tenth, eleventh and twelfth paragraphs of the bill.

The master finds that the averments of the fourteenth paragraph of the bill are not true. They are all denied in the answers of the society and of Duss, and are altogether unsupported by any evidence, and are all directly denied by Duss in his testimony (page 2637); and the averment that Duss directed that no new members to be admitted, and that he and his wife were the last members admitted, are directly contradicted by Samuel Sieber, a member of the Board of Elders and Junior Trustee (testimony pages 2372-3 and 2383); and Exhibit No. 18, pages 108, 109, 110 and 130, shows that Duss was admitted on January 24th, 1890, his wife and fifteen others on February 13th, 1890; Gottlieb Riethmueller, present Junior Trustee, and Samuel Sieber and wife were admitted February 15th, 1892, and Leonard Hoerer on March 14th, 1893.

The fifteenth paragraph of the bill is not true, as stated. The facts are as hereinbefore found and stated, viz.: The Economy Savings Institution was a private partnership banking company, in which the Harmony Society had eight-tenths interest, and John Reeves and Henry Hice one-tenth interest each. On July 31st, 1890, about the time J. S. Duss became Junior Trustee, it was indebted to its depositors $1,000,796.16, and to others $61,097.18; with a very small amount of assets available to pay its creditors; and it was practically insolvent—so far as the partnership property alone was concerned—if called upon to pay its debts. This condition had been caused by its loans to and overdrafts of the Beaver Falls Cutlery Company and the Western File Works, two manufacturing companies, of which the Harmony Society was the principal owner. These loans and overdrafts, amounting at that time to $1,136,034.88, had been made by the direction of Mr. Henrici, Senior Trustee of the society, and with which Duss has nothing whatever to do. What the loss to the society was from these two manufacturing companies was not known to Duss, and was not shown;

but the management of both companies and of the Savings Institution was controlled by Mr. Henrici as trustee of the Harmony Society, the principal owner of all. Mr. Duss made no such arrangement or agreement with Henry Hice and John Reeves as is charged in the bill; but when he learned the condition of the Savings Institution and the extent of its indebtedness, for which the society was liable as a partner, the trustees placed money of the society to the amount of $974,070.16 in the Savings Institution, to be used in the payment of its other creditors, to relieve the society from danger of judgments against it and the sale of its property by the sheriff. It was necessary to preserve the existence of the society, and the knowledge or consent of the members of the society to their action in this matter was not necessary. Full power in the matter was given to the trustees by the fourth and fifth articles of the agreement of August 12th, 1847, Exhibit No. 83 (ante page 28 to 34), which is as follows, viz.:

> "Article 4th. We do further ordain and establish a Board of Trustees for the *exclusive management of the external business and affairs of the society*, which Board shall consist of two persons who shall be members of the Board of Elders."
>
> "Article 5th. The said trustees shall jointly and severally have and exercise the powers following, to wit:
>
> "1st. In their own names, or that of either of them, or otherwise, to purchase and sell, deal, barter, exchange and traffic, make all contracts and bargains in the prosecution of the business, to invest the funds in stocks and other securities, and make transfers and assignments, to collect debts, *receive and pay out moneys, settle claims, compromise disputes*, institute legal proceedings, appoint and dismiss agents, clerks and attorneys, in fact and at law, and generally to transact all the external business and affairs of the society."

This use of the funds of the society was thus not unauthorized, and was both legally and morally right and proper. It was paying debts for which the society was legally liable as a partner, and morally right, because the society had, through its connection with the Cutlery Works and File Works, drawn the money of the depositors from the Savings Institution, and thus caused its inability to pay its debts.

It is true that no proceedings have yet been commenced against Hice and Reeves for the recovery of the money owing by them to the society through this partnership; but there has not yet

been any settlement of the affairs of the Savings Bank, and neither of these parties have been released from their liability; and it is averred in the answer of Duss, and testified to by him on the witness stand (See Testimony, pages 2683-4), that it is his intention to have a settlement of the partnership business, and to collect from Hice and Reeves what may be found to be owing by them to the society on such settlement.

In the sixteenth paragraph of the bill it is charged that said Duss and certain confederates, conspiring together to defraud the plaintiffs and the members generally, caused to be executed by Jacob Henrici and John S. Duss, trustees, a mortgage for $400,000 upon the lands of the society, including the town of Economy; that this mortgage was made without authority from the members or the plaintiffs, and was executed by Mr. Henrici in *articulo mortis*, and wholly without comprehension of his act, and was for the purpose of paying off claims upon which the society was only partly, if at all, liable.

These charges are not true, as stated. The facts are that on December 21st, 1892, a mortgage upon lands of the society in Allegheny and Beaver Counties, including the town of Economy, was executed by Jacob Henrici and John S. Duss, trustees of the society, to Harry Darlington, trustee, as security for the payment of a loan of $400,000 then made by him to the society. This loan was obtained and the mortgage executed for the reasons and purposes hereinbefore stated, on pages 101, 102 and 107. There was no conspiracy or purpose to defraud any person, either members of the society or others and there was no evidence of any such conspiracy or purpose. The making of this mortgage was not unauthorized. If sufficient authority for this purpose was not conferred upon the trustees of the society by the provisions of the fifth article of the agreement of August 12th, 1847 (hereinbefore quoted, pages 28 to 34), Exhibit No. 83, it certainly was by the agreement or instrument of December 20th, 1892, Exhibit No. 49 (hereinbefore quoted, pages 102 to 166), which, as already stated,(page 102) after it had been fully explained to them, had been signed and acknowledged by all of the members, except Benjamin and Henry Feucht and their wives, who afterwards, on May 16th, 1893, by a paper under their hands and seals (Exhibit No. 10 in Evidence) duly acknowledged, and recorded in Beaver County, in Deed Book, vol 142, page 253, on July 19th, 1893, ratified, approved and confirmed it. (See testimony of Henry Breitenstein, pages 1949, 1989, of Henry Hice, page 1571, etc., and of J. S. Duss, pages 2529-30 and 2733, as to the execution of this paper of December 20th, 1892) No authorization by the plaintiffs was

necessary. They were not members of the society and had no interest in the property.

The plaintiffs offered no evidence in support of the charge that "the mortgage was executed by Henrici when in *articulo mortis* and beyond any power of comprehension of his act," except of the fact that he was eighty-seven years of age, not in good health, and that it was signed by him only a few days before his death. The agreement authorizing the execution of the mortgage, Exhibit No. 49, was signed by Mr. Henrici and the other members on the evening of December 20th, 1892; and the mortgage to Mr. Darlington for $400,000 was signed by Mr. Henrici on the next morning, December 21st, 1892. He died on December 25th, 1892. The testimony of Mr. Duss in relation to the execution of the agreement of December 20th, 1892, by Mr. Henrici (testimony, page 2530), is as follows:

"Q. Did you see Mr. Henrici sign it?

"A. I did.

"Q. Give us the circumstances of it.

"A. After all the other members had signed it, Henry Breitenstein, the Justice of the Peace, and myself, Judge Hice, Mr. J. Twin Brooks, and two or three of the women folks went to his room, and he there signed his name in the space that had been left vacant.

"Q. Did you see him sign it?

"A. I did.

"Q. Did you have any conversation with him before he had signed it?

"A. I did.

"Q. What was it?

"A. We talked over the question of a more full definition of the powers of the trustees and the creating of the mortgage and this extra precautionary measure before the execution of the mortgage then he signed his name. The reason that it is so peculiar is that a space had been left vacant, and it bothered him to get it in between the other names. For years he had been able to sign his name in the dark without spectacles. That is, when he began he made one letter, J, then stopped and looked again, and by stopping and looking at it he got so confused that he signed his last name in German."

Judge Hice testified (Testimony, pages 1575-6) in relation to the execution of the mortgage by Mr. Henrici as follows:

"Q. Were you present at the time that mortgage was signed?

"A. I was.

"Q. Did you see Mr. Henrici sign it?

"A. I did.

"Q. State where it was signed?

"A. It was signed in his room in the Great House at Economy—the room which is directly across from the hall of the larger room, which they term the Assembly Room, where the Board of Elders and the society on such occasions meet. Mr. Henrici was in that room, and it was in the morning, simply nine o'clock or so; in the forenoon, at least. Well, I went into the room, and Mr. Henrici was sitting to the left, and as I went in Mr. Duss was with him, and Mr. Breitenstein. When we went in Mr. Henrici got up from the chair in which he was sitting and came across the room to the table, which stood to the front of the room next the street, and Mr. Henrici sat down. Some words were spoken by him to Mr. Duss, and responded to by Mr. Duss, in German. What they were I do not know. He then took up the pen and signed the mortgage.

"Q. Had you any conversation prior to the execution of that mortgage, about the mortgage, with Mr. Henrici?

"A. Some days before the execution of that mortgage I was up there, and was in his room. I don't know just how long that was before—it was some days—and the matter was spoken of. He referred to it. Could not say just how long that was before it was executed. My impression is he spoke of the paper gotten up by his co-trustee, Mr. Duss, or that it was being gotten up for them, and spoke of the necessity of their getting money—raising money.

"Q. At the time he executed the mortgage, what was his condition?

"A. He was feeble, as far as his physical strength was concerned, but he was able to get up off his chair and walk across the room and sit down on a chair at the table and sign the mortgage. Mentally, I believed then, as I do now, that he understood what he was doing fully."

This testimony is wholly uncontradicted, and it is evident from it that at the time Mr. Henrici signed the agreement authorizing the mortgage, and the mortgage itself, he had a full comprehension of what he was doing, and the master so finds.

There was no evidence in support of the averment that it was the purpose of Duss and others, by the foreclosure of this mortgage, to obtain possession of the property mortgaged; and it is directly contradicted by the testimony of Mr. Brooks (page), and of Mr. Duss (page), and of Mr. Hice (page). And the master finds that it is not true.

As hereinbefore stated, an additional loan of $100,000 was on May 31st, 1893, procured from Mr. Darlington for the purposes already stated, and the second mortgage—referred to in paragraph seventeen of the bill—given as security for its payment. The making of this loan and the execution of this mortgage were within the powers conferred upon the trustees, and authorized by the agreement or instrument of December 20th, 1892 (Exhibit No. 49, quoted ante, pages 102 to 107). The loan secured by this mortgage has been paid in full and the mortgage satisfied, since the filing of the bill in this case.

What stocks and other property were held by the Harmony Society when John S. Duss became trustee on April 1, 1892, and what disposition has been made of them and of the proceeds of such as have been sold has been already fully stated; and such statement has shown that such proceeds have been applied to the payment of the debts of the society and for its uses and benefit, and that the charge in the eighteenth paragraph of the bill, that Duss is attempting to divert the assets of the society from the use of its members and to appropriate them to the enrichment of himself and his confederates, is not true.

The charge in the nineteenth paragraph of the bill, that Duss, by artifice, misrepresentation, coercion and fraud induced or forced all the active and more intelligent members of the society to withdraw and has secretly and fraudulently appropriated several hundred thousand dollars of the moneys of the society, and used it in getting rid of these members of the society, is denied in the answers, is not supported by the evidence, and is not true. The names of the withdrawing members, except the Feuchts, with the dates of their withdrawal and the amounts received by them have been already set forth on page 111. Of the withdrawing members only Henry Feucht, Julius Stickel, Moritz Fredericks and Samuel Sieber were examined as witnesses. Neither Feuchts, Stickel nor Fredericks claimed that Duss induced them to withdraw, and Sieber testified that Duss opposed his leaving the society (testimony, page 2373). All of these withdrawing members were joined as defendants in the bill in equity for the dissolution of the society filed by Benjamin and Henry Feucht and others, on February 10th, 1893, except Leonard Hoerer, who, at that

time, had not yet been admitted to membership. None of these members spoke of withdrawing from the society until after the Feucht bill had been filed, and the run on the Economy Savings Institution—started by the threats of that litigation, and continued and increased by the actual filing of the bill—had continued for some time and from it and the excitement caused by it, it appeared to be doubtful whether the society would be able to get through without loss of all its property. These members then became uneasy and wanted to withdraw. Hugo Miller was the first to speak of withdrawing shortly before the hearing in the Feucht bill. Shortly after the hearing he spoke to Mr. Duss again. The reason he gave for wanting to withdraw was, that on account of his language being a different dialect from that of the others, it was difficult for him to get along with them, and that it was doubtful whether the society would be able to get through its financial difficulties. (Duss' testimony, page 2553). Mr. Duss protested earnestly against his withdrawal, but he insisted, and demanded $5,000. This was finally agreed on, as he had charge of the saw mill, and his management and that of Fischern before him, had caused an annual loss of a larger amount than this to the society. He withdrew on March 8th, 1893, and received the amount he demanded.

Julius Stickel and his wife and stepdaughter, Bertha Geratsch, were the next to ask to withdraw. No objection was made to their withdrawal, as he had refused, from the fall before, when directed by the board, to do any work and had done nothing all the preceding winter. (See his testimony, page 475, and that of Duss, pages 2555-6). He had also assisted the Feuchts in their litigation, and the board were dissatisfied with him. He also demanded $5,000, but was given only $3,500 for himself and family. They withdrew March 29th, 1893.

Jacob Nicklaus was the next who wanted to withdraw. His reason was that they were so much stirred up about the Feucht litigation, and that when he joined he thought the society was wealthy and now it seemed to be bankrupt; and he demanded $5,000—the same that Hugo Miller had received—and threatened litigation if it was refused. Duss protested, and tried to persuade him to remain, but he would not. He was given $5,000 and withdrew May 5th, 1893.

Sigmund Stiefvater also wanted to withdraw, and also demanded $5,000. He complained that they were continually finding fault with him because he drank so much, and he had been suspended from the charge of the blacksmith shop, and he would not stand it any longer. Duss tried to induce him to remain, but

he would not. He was given $5,000, and withdrew May 17th, 1893.

Moritz Fredericks was the next who wanted to leave. He also thought that the society would not be able to get through its financial trouble. He thought he ought to receive $5,000. Mr. Duss and Mr. J. T. Brooks both tried to persuade him to stay, but could not succeed. (See testimony of Duss, page 2559, and of Brooks, page .) He was given $5,000, and withdrew June 5th, 1893.

Blazsius Platz complained that he could not get along with the other members, and insisted on leaving. Mr. Duss tried to keep him, but did not succeed. He withdrew June 9th, 1893, and was given $5,000.

Christina Hoerer and her son, Leonard, withdrew on June 23rd, 1893, and received together $5,000. Her complaint was that her sister, Mrs. Nagle, tormented her and made her life miserable, and she wanted to leave. Mr. Duss and the Board of Elders tried to induce her to remain; but she would not, and threatened to give the society trouble if she was not settled with and allowed to withdraw.

Mrs. Elizabeth Sieber insisted on leaving. She complained that people were talking about her, that lies had been circulated about her, and she would not stand it. She wanted $5,000, but was given $4,000.

Samuel Sieber, after his wife left, also insisted on leaving on account of the stories circulated about his wife, and that she was renting a house in Allegheny with a man named Slick. Mr. Duss, and all who talked to him about his leaving, wanted him to remain. (See his testimony, page .) He withdrew July 6th, 1893, and was given $1,000.

Mr. Duss did not try in any way to induce any of these persons to withdraw, and no witness testified that he had done so, and his testimony as to the reasons given by them for wanting to withdraw, as above stated (see testimony pages 2552 to 2556) is uncontradicted.

The payments made to these withdrawing members were not made secretly, but were known to the Board of Elders and both trustees, and were within the powers of the trustees under the provisions of the second paragraph of the fifth article of the agreement of August 12th, 1847, hereinbefore quoted, page 33—and which is as follows:

> "The said trustees shall jointly and severally have and exercise the powers following, to-wit:

"Second. To make donations to seceding and excluded members and to the representatives of those who are deceased; and for such benevolent and charitable purposes as they may deem prudent and fit."

The amount given to Hugo Miller—the first to withdraw—by the trustees appears to have fixed the amount which those afterwards withdrawing thought they were entitled to receive. The reason why the trustees yielded to the demands of these parties was that two of them plainly threatened litigation, and some of the others seemed to intimate the same intention, if their demand was not acceded to; and in the condition of the finances of the society, and the excitement and suspicion already created by the Feucht litigation, the society could not afford to allow any further litigation against it that could be avoided; and the action of the trustees, in their settlements with the withdrawing members, was certainly prudent, and, under the circumstances, for the best interest of the society.

It is thus evident that the withdrawal of these members was not caused by any scheme or action of Duss, but by the filng of the Feucht bill against the society and the consequent excitement and panic, and by the actions of the plaintiffs in that bill prior to and after it was filed.

After the withdrawal of Hugo Miller, Sigismund Stiefvater and Moritz Fredericks, members of the Board of Elders, a meeting of the members of the society was held on June 6th, 1893, at which the question was submitted for their consideration as to whether they would prefer that the membership of the board, required by the agreement of August 12th, 1847, should be filled up with females, or that the number of members of the board, as fixed by that agreement, should be reduced by an amendment of the agreement, as, in consequence of deaths and withdrawals, there was not a sufficient number of male members left in the society to complete the required number. At an adjourned meeting of the members, held on June 8th, 1893, it was decided that the vacancies in the Board of Elders should be filled by female members; and Mr. Duss requested that each member should write upon a card the names of the three female members that he or she regarded as the best fitted for the position, so that the board should became acquainted with their preferences. (See testimony of Duss, pages 1061 to 1063). Regina Lautenschlager, Fredericka Muntz and Susie C. Duss were elected to fill the vacancies. Afterwards, Blazsius Platz and Samuel Sieber, members of the Board of Elders, having withdrawn from the society, Maria Diem and Karoline Molt were elected to fill their places in the board.

It is true that prior to this time, women had not been elected to the Board of Elders, but the averment in the bill—that women were not eligible—it not correct. In none of the agreements or constitutions of the society in evidence, is there any difference or distinction made between the male and female members of the society, and all the agreements show that the membership was pretty nearly equally divided between the sexes; and all are signed by the women as well as the men, and all their provisions relate to the members, not to male members or female members, and all members are treated as having equal rights and privileges. The only qualification required to be a member of the Board of Elders is contained in Article 2d of the agreement of August 12th, 1847, which is as follows, viz.:

> "Article 2d. We hereby ordain and establish a Board of Elders, which shall consist of nine members of the Harmony Society, and their successors, to be chosen as hereinafter provided."

And in the seventh paragraph of the fourth article of the same agreement authorized the Board of Elders to fill all vacancies that may occur in the board.

The women who were elected to fill the vacancies in the board were members of the society, and therefore qualified. The averment that they were personally selected by Duss, without the assent of the members, is not true. Although the assent of the members of the society was not necessary for their election, but only that of the board, yet, in the choice of the first three female members of the Board of Elders the members of the society were requested to suggest to the board the names of the three members they considered best fitted for the position; and the three preferred by the members were elected by the board to fill the vacancies. That some of them cannot understand English is not a serious disqualification in a society where all, or nearly all, the members are German and the German language is spoken by all.

How Benjamin Feucht and Henry Feucht and their wives and sister withdrew from the society, and why the amounts received by them were given to them, has been already stated.

All the other averments of this paragraph of the bill are denied in the answers and not supported by evidence.

In the twentieth paragraph of the bill, it is charged that Duss secretly, without authority from the members of the society, entered into an arrangement with Hice, Reeves and Dickson to convey the Economy and other lands of the society to the Union Company, and that such conveyance of said property was made by the trustees without the knowledge of the plaintiffs or of the

members of the society, and was an attempt by Duss to "wholly terminate the existence of said society, not only as to the government thereof by the Board of Elders and by the members, but also as to the ownership of any property."

The conveyance of the lands of the society in Allegheny and Beaver Counties to the Union Company is admitted in the answer. All the other averments of the paragraph are denied.

There is no other evidence in relation to this transaction than the application for the incorporation of the Union Company, its letters patent, the agreement of April 11, 1894 (Exhibit No. 80, hereinbefore quoted, page 112), the conveyance to the Union Company (Exhibits Nos. 30, 31 and 32), and the testimony of J. T. Brooks Esq. (testimony, page 1435, etc., and 1512, etc.), of Judge Henry Hice (pages 1590, etc., and 1662, etc.), J. S. Duss (page 2639, etc.), and James Dickson (pages 1875 to 1898). From this evidence the master finds the following to be the facts:

In the fall and winter of 1893, after the Feuchts' litigation against the society had been settled, there were threats of further suits against the society by persons claiming to be heirs of deceased members of the society; there was also some talk of escheat proceedings against it. The society was still indebted, and for the payment of this indebtedness it would be necessary to sell some part of its real estate. J. T. Brooks, Esq., then, as counsel for the society, first suggested to Mr. Duss that it would be advisable, and for the interest of the society, to place the title of the real estate of the society in a corporation, to be created under the laws of the State for that purpose, the stock of which would be owned by the society—for the purpose of putting the title of the property in such a condition that it could be more readily examined and passed, thus facilitating sales when necessary to be made; to remove the title of the property from the attention of those persons talking of escheat proceedings, and also to render it easier to procure a loan upon its security, by a pledge of the stock of the corporation, than it would be upon it as real estate subject to the lien of the two Darlington mortgages—if such loan was needed.

When this was first proposed to Mr. Duss, he objected to it as a departure from the usages of the society, but, after further consideration and consultation with the other counsel of the society, along with Mr. Brooks, he consented; the plan was adopted, and the Union Company was incorporated under the laws of Pennsylvania for "the purpose of purchase and sale of real estate, or for the holding, leasing and selling real estate," with a capital of $5,000, divided into one hundred shares of $50 each, which were

subscribed for by Henry Hice, Richard R. Hice, William S. Morrison, W. J. Stewart and Agnew Hice, twenty shares each. The Union Company having been thus incorporated, the plan of conveying the real estate of the society to it, as suggested by Mr. Brooks, was submitted to the members of the society, approved by them, and the agreement of April 11th, 1894, (Exhibit No. 80, hereinbefore quoted, page 112, etc.), after having been explained to them, was agreed to, signed and acknowledged by all the members, authorizing and requesting the trustees to sell and convey to the Union Company all the lands of the society situate in Allegheny and Beaver Counties, in consideration of stock in said company to the amount of $397,500, to be held and owned by the trustees for the use and benefit of the society, in accordance with the articles of association. In pursuance of this action of the society, all of the one hundred shares of stock held by the above named subscribers—except ten shares held by Henry Hice—were transferred by the subscribers as follows, viz.: Ten shares each to J. S. Duss, Gottlieb Riethmueller and Conrad Hermansdoerfer, members of the Board of Elders of the society, and ten shares to James Dickson, all of whom were elected directors of the corporation; and fifty shares to Duss and Riethmueller, trustees of the society. The capital of the corporation was increased to $400,000 in 8,000 shares of $50 each; the payment of subscriptions to the capital stock, in real estate authorized, and 7,900 shares subscribed for by Duss and Riethmueller, trustees for the Harmony Society, and paid for by the conveyance (Exhibits Nos. 30, 31, and 32) of the real estate of the society to the Union Company, subject to the Darlington mortgages. So that now 7,960 shares of the stock are held by Duss and Riethmueller, trustees of the Harmony Society, for the society, and the remaining fifty shares by Duss, Riethmueller and Hermansdoerfer, members of the Board of Elders of the society, and Hice and Dickson in their individual names; but, as testified by Hice, Dickson and Duss, all of the fifty shares are really the property of the society, and it is the real owner of all the stock of the company, and thus, practically, still the owner of the real estate conveyed, the character of the property of the society only being changed from real to personal, and by the express terms of the agreement of April 11th, 1894 (Exhibit No. 63), it is held by the trustees upon the same trusts as before, viz.:

> "for the benefit of the society, in accordance with, and on the terms and conditions of the articles of agreement of said society, and the ratifications and modifications thereof, as the same now exist."

John Reeves had nothing to do with the formation of the Union Company, and had no arrangement with Mr. Duss in reference to it or to the conveyance of the lands of the Harmony Society to it. (See his testimony, page 1720-1.)

The plaintiffs aver that they are advised that it was not competent for the trustees to convey said properties to said Union Company, but such transfer was a breach of trust and wholly invalid.

By the third paragraph of Article 5 of the agreement of August 12th, 1847 (Exhibit No. 83, hereinbefore quoted, page 33), it is provided:

> "The said trustees shall have power, jointly, to purchase real estate in their own names, and also in their joint names to grant, bargain, sell and convey *all or any of the lands and tenements now or hereafter owned by or belonging to the said society*, and for this purpose to execute deeds of conveyance in fee simple or otherwise in their joint names; but the proceeds of all such sales shall be held in trust for the society."

And in the first paragraph of the same article they are authorized:

> "In their own names, or that of either of them, or otherwise, to purchase and sell, deal, barter, exchange and traffic; make all contracts and bargains in the prosecution of the business, *to invest funds in stocks* and other securities, and make transfers and assignments."

Under the powers thus granted, the trustees have, for many years, purchased and sold lands very extensively—notably at Beaver Falls—and their right to do so has never been questioned. These provisions would clearly authorize a sale of land to the Union Company and the investment of the proceeds of the sale in the stock of that company, which is practically what was done in this case by the sale of the land in consideration of the payment in stock. Nor can it be objected that they had not the power to sell or convey all the lands of the society, or that the land sold is the home of the society. The article authorizes the sale of *all* the land now or hereafter owned by the society. The Economy lands, included in the conveyance to the Union Company, were owned by the society in, and prior to 1847, and were then, as now, the home of the society, and were not excepted from the power of sale; and in 1815, when the society moved from Butler County to Indiana, and again when it moved from Indiana to Economy in 1825 all its lands—including its home—were sold.

In addition to the broad powers given to the trustees by the agreement of 1847, there is the authority given to them by the agreement of April, 1894, signed by all the members of the society, which specially authorizes this particular conveyance and the purposes and consideration for which it is to be made. If all the members of the society, who were the real owners of the property, could authorize or ratify the conveyance, in the manner and for the purposes for which it was made, they have certainly done so.

The master, therefore, finds that the conveyance to the Union Company by the trustees was not an attempt on the part of Duss to terminate the existence of the society, and did not terminate it; that it was not a breach of trust on the part of the trustees; that it was competent for them to make the conveyance; and, further, that it was not an abandonment of any of the purposes for which the association was founded.

The twenty-first paragraph of the bill charges that Duss, for the purpose of winding up and dissolving the society, is now endeavoring to compel the remaining members to depart by means of intimidation and oppression; and alleges, as an instance of such cruel and oppressive conduct, that he, in June 1894, caused Elizabeth Beck to be taken from her residence and incarcerated in an old, abandoned shed, last used as a chicken-coop, and deprived of every comfort necessary for a woman of her age.

The whole paragraph is denied in the answers, and is not sustained by the evidence. There is no evidence that Duss is endeavoring, by any means, to compel the remaining members to withdraw. No members have withdrawn from the society since Hugo Miller and others withdrew, in the early part of 1893, at the time of the Feucht litigation, as hereinbefore stated; the last being Samuel Sieber, in July, 1893. And there is no evidence of any effort to procure the withdrawal of any, or of any complaint on the part of any member of having been improperly treated in any way.

The facts in relation to Elizabeth Beck, as shown by the evidence, are as follows: In 1894, she was about eighty-one years of age, and had long been a member of the society. As far back as 1883, she was able to go about, but too feeble to do anything, and was living in one of the society's brick dwelling houses, with a Mrs. Vierheller, whom she called her housekeeper. In 1892 Mrs. Vierheller was succeeded by Mrs. Wagner, as housekeeper. In 1894 she had become unable to take care of herself, and Fredericka Muntz, one of the Board of Elders, believing from what

she had seen, that she was not being properly cared for by Mrs. Wagner, brought the matter up at a meeting of the board, and, she volunteering to take her to her house and see that she was properly taken care of, it was determined that she should do so, and that the small frame house in the same lot should be put in condition for her. This house was a one-story frame house, about 16 by 32 feet, containing two rooms—which had been, originally, used as a saddlery shop, afterwards for silk-weaving; and at one time, the family in the brick house, while raising chickens, had put the young chickens—or "peepers," as they were called by Henry Feucht—in it to protect them from the rats. It had never before been used as a dwelling. One of the rooms of this house having three windows, was renovated, cleaned, painted and white-washed, two single bedsteads and some other furniture placed in it, and rugs laid on the floor. After this had been done, Elizabeth Beck, on June 8th, 1894, was invited by Fredericka Muntz to take a carriage ride, and at the end of the ride was brought to this house, and remained there until she died, on July 28th, 1894. During this time she was attended to and cared for by Fredericka Muntz, her sister, Mrs. Louisa Scharf, and Mary Naugle, their domestic,—being never left alone, and was washed and dressed by them as if she was a child, as she was entirely unable to wash, dress or take care of herself. She spent the day in Fredericka Muntz's house with her, and slept at night in the frame house. Mary Naugle, whose wages had been increased for taking care of her, sleeping in the same room with her. While with Fredericka Muntz, she received the best care possible, and was contented and satisfied. She died in the frame house of apoplexy, after an illness of only twenty-four hours. Dr. J. T. Bole, who had been the physician for the society for thirteen or fourteen years, attended her, and he testified (testimony, pages 2280 to 2283) that her room in the frame house "was the most suitable place they had in Economy for a sick person; the floor was covered with rugs and was thoroughly clean; the walls, white-washed, and the house was so it could be thoroughly ventilated. It was better than any room in the large house." "It was a better room for a sick person than in any house in Economy, for a sick person." (See testimony of Christina Kolb, paegs 728 to 740; of Henry Feucht, 741 to 743; of Fredericka Muntz, 1381 to 1389; of Mary Naugle, 2271 to 2279; of Dr. J. T. Bole, 2279½ to 2185; of Mrs. Louisa Scharf, 2285 to 2293; of John S. Duss, 2496-7). Elizabeth Beck was not cruelly and oppressively treated, as alleged in the bill, but received kind and suitable treatment.

The only other member of the society, claimed by the plaintiffs

to have been cruelly treated by Duss, is Moritz Fredericks, and the only testimony in relation to it is that of Henry Feucht (page 373) and of John S. Duss (pages 2626 and 2738 to 2741). That of Feucht's is clearly nothing but hearsay and incompetent, and as to the material fact, is contradicted by Duss. It appears that Fredericks—who was then living at the Great House with Henrici and Duss—on the Thursday preceding the death of Mr. Henrici, on Sunday, December 25th, 1892, felt piqued because he was not, in the absence of Mr. Duss, invited to ask a blessing at the table, left the house. His absence was not noticed by Mr. Duss until Sunday, the day of Mr. Henrici's death, when he sent Miller and Nicklaus to look after him—who found him in his tailor-shop. It is not astonishing that Mr. Duss at that time, when he was engaged with the business connected with the $400,000 loan from Mr. Darlington, should not have noticed Fredericks' absence until Sunday. There is no evidence of cruelty or oppression in this case.

The only other case of cruelty claimed by the plaintiffs was that of Mrs. M. Woelfel, the mother of the former Junior Trustee. She was not a member of the society, was living in one of their houses, at a rent of $3 per month. On October 9th, 1893, a resolution was adopted by the Board of Elders that she "be directed to leave the house, as through her gossip, she was causing continual strife." At her request the board, on October 17th, 1893, allowed her to remain until April 1st, 1894, on her promise that she would then leave the village. On April 23rd, 1894, Mrs. Woelfel, refusing to leave the house, the board agreed to charge her $25 per month. The result was that on June 12th, 1895, when this testimony was given, she still remained in the house and had not paid any rent. (See testimony of Duss, pages 941 to 945.)

The charge of intimidation and oppression and cruel conduct on the part of Duss is not sustained by the evidence and is not true.

The twenty-second paragraph of the bill charges that the said Duss has been and now is engaged in the business of selling intoxicating liquors, as the property of the Harmony Society, without any license whatever, either from the government of the United States or from the courts of the State of Pennsylvania. This is denied by the answers.

There has been a great deal of testimony in reference to the sales of liquors, taken by both the plaintiffs and defendants, from which the master finds the following facts:

In 1840 or 1841, which is as far back as the oldest witnesses recollect, the society had a distillery—large for the time—vineyards, wine presses and a brewery, and manufactured and sold

whiskey, wine, cider and beer; and a weekly allowance of wine, cider or beer was regularly distributed to the members, and of cider or beer to their hired laborers; but whiskey was not given out, except in cases of sickness or exposure. The manufacture of whiskey was continued until the United States revenue tax was imposed on it, in . . . . . , when it was discontinued; but its sale was continued until 1891 or 1892, when their stock of their own manufacture was exhausted. They made wine regularly every year until 1890 or 1891, and continued to manufacture beer for a considerable time, but how long was not shown. This distribution of wine and cider among the members is still continued, a certain quantity per day being allowed for each person, as has always been the practice, and has always been and still is made from what is called the wine cellar. The society has, from early times until they leased it within a few years back, carried on a hotel on the Beaver road, which runs through Economy, and was formerly a stage route. At this hotel they kept a bar, where they publicly sold wines, whiskey and beer, until they closed their distillery, upon the imposition of the United States tax. The bar was then also closed, and from that time they sold the whiskey and wines of their manufacture at their store, and delivered them from their wine cellar on order from the store. This continued until 1891, when Mr. Henrici, having been told that they ought to have a license, procured what was called a United States druggists' license; that is, he paid the United States tax on retail sales of liquors for the year beginning July 1st, 1891, and received a certificate of payment. At that time he was informed by the government officer that it was not necessary, as he had a right to sell his own manufacture. This retail license tax has been paid until July 1st, 1896. After the first payment of this tax no whiskey or wine was allowed to be sold except on a physician's prescription, until a wholesale license, under the State law, was granted for the year beginning April 1st, 1895. Up to that time they had never sold any other whiskey, wine or cider than of their own manufacture, and no whiskey at all after 1892, as, at the time of the death of Ernest Woelfel, in July, 1890, there was only a few gallons of their whiskey remaining (as testified by Lawrence Flechrer, page 1306, only four gallons), which was bottled and sold only in special cases. The sale of their wine on prescription was continued until the State license was granted; after that they sold by wholesale liquors they had purchased, as well as their own wines.

Dr. J. T. Bole, of Baden, has been the physician of the society from 1881 to the present time, and had charge of the drug store of the society, which was part of their general store—had his office

there and issued the medicines necessary. He wrote many prescriptions for wine. He prescribed it for any person that would not abuse the use of it, understanding that he had the right to do so. The members were allowed a certain quantity of wine; they could not get more without a prescription. He prescribed whiskey only for people needing it as a medicine.

After John S. Duss was elected Junior Trustee in 1890, he endeavored to reduce the sales of wines by raising the price. Mr. Henrici was indignant at his interference, and on Mr. Duss's suggestion that the wines should not be sold, but kept for the old members who needed it, Mr. Henrici made an investigation of the quantity on hand, purchased a large quantity of grapes and had enough wine made to fill up the casks. In 1893 they had about 30,000 gallons of wine on hand.

Mr. Duss does not use liquors of any kind, is an advocate of temperance, and is opposed to their use; but on account of the state of the finances of the society he wanted to turn this large quantity of wine into cash. In the spring of 1894 he sold a quantity of it to J. J. Speck & Company, licensed wholesale dealers, for $2,000, and still had a large quantity on hand. He was advised that in order to dispose of it it would be necessary to obtain a wholesale license under the law of Pennsylvania, known as the "Brooks Law," and obtained such a license on April 1st, 1895, for one year. During that year, in order to facilitate the sale of the wine, he purchased other liquors to be sold with it, and sold the wines and liquors by wholesale. License for the following year was refused by the Court of Beaver County, as unnecessary, since which time the sales have been stopped. The society had still remaining on hand at the expiration of the license about 15,000 gallons of this wine.

The manufacture and sale of whiskey, wine, cider or beer having always been recognized and treated as a legal, legitimate business, and as they were amongst the earliest industries carried on by the society under the direction and supervision of George Rapp, its founder, their continuance in the same manner up to this time by the society could not be an abandonment of the purposes for which it was founded, unless a failure on the part of the society to comply with the provisions of the Internal Revenue Law of the United States, or the statutes of Pennsylvania in regard to the manufacture and sale of liquors would be such an abandonment. But these laws were enacted after the businesses had been carried on by the society for many years, and were not intended to, and did not prohibit them. The law of the United States is purely a revenue law, and imposed a tax upon sales and provided penalties for

non-payment. By it no tax was imposed for the sale of cider or of wine manufactured by the vendor. As to the sales of whiskey, the society complied with the law, in a manner satisfactory to the officers appointed by the government, by the payment of a special tax on their sales, and such penalty as was imposed by the proper officer for prior neglect to pay the tax. There was, therefore, no violation of this Act.

The Statute of Pennsylvania is also a revenue law and a police regulation. Its object is not to prohibit, but to regulate the sale of wines and liquors, and to derive a revenue therefrom. It does not declare such business immoral, but it prohibits the manufacture of spirituous and malt liquors, and the sale of spirituous, vinous and malt liquors, without a license obtained in the manner provided in the Acts; and to enforce a compliance with its provisions, imposes certain penalties for violation of them. A license is not required for the manufacture or sale of cider. And the Acts provide that druggists may sell on physicians' prescriptions without a license. The society had a drug store, attended to by Dr. Bole, and the testimony is that neither whiskey nor wine was sold, except on physicians' prescriptions. There was evidence, on the part of the plaintiffs, of sales of wine and whiskey having been made, but no evidence that they were made without prescriptions; and the man who was said to have made the sales testified that he made no sales, except on prescription of a physician. Therefore, there was no violation of the Act. But if either the Statutes of the United States or of the State of Pennsylvania have been violated, they each provide certain prescribed penalties of fine or imprisonment for such violation, to be enforced in a prescribed manner by the proper tribunal and proper officers, and no other forfeiture or disqualification. And as the offences created by these Acts are *mala prohibita*, and not *mala in se*, and could not cause a forfeiture of the rights of the members of the society or its dissolution, but could only render the parties committing the offenses liable to the penalties imposed by the Act, and no others.

But the charge in the bill is not against the society, but against John S. Duss, as being engaged in the business of selling intoxicating liquor without license. There is no evidence of Duss's selling any wines or liquors, except the sale made by him to J. J. Speck & Company. But if it were true that he was selling liquors without license, in violation of law, he would be liable to prosecution under the acts and penalties provided, but in no other way; and his individual acts could not affect the rights of the other members or dissolve the society.

The twenty-third paragraph of the bill charges that the principle

of equality has been abandoned; that Duss and his family enjoy every luxury at an annual expense of thousands of dollars, while the aged and infirm members are obliged to be content with the bare necessities of life grudgingly given them.

This paragraph is denied in the answers. The master finds, from the evidence that from some time prior to 1880, up until the taking of the testimony in this case in 1896, all the supplies were furnished to the members in substantially the same manner; that is, coffee, sugar and tea were distributed to the members at the society store —a certain quantity for each person—every two months; all other groceries at such times as they were called for, and in such quantities as the members said they needed; clothing, hats and shoes in the same manner from the same place; flour and chicken feed they got from the grist mill, as they wanted them; meat, viz., beef, veal and pork twice a week from the butcher—who slaughtered twice a week, and gave them about two pounds of meat for each person, and more if they wanted it; bread from the bakery, where they baked every day, as much as they wanted; milk was delivered twice a day at their homes, a pint morning and evening for each person; wine, cider or beer from the cellar, a gallon a week for each person, in summer, and half that quantity in winter. Vegetables and chickens they raised for themselves, in the yards and gardens attached to their houses. Carpets and furniture for their houses were furnished them upon request made at the store or general office. Domestic servants and nurses were furnished those who, from age, weakness or sickness needed their assistance. In case of sickness they were attended by a physician employed and paid by the society. In the distribution of these supplies the families of the members formed a part of the number of persons to be provided for, and there was no discrimination among members and their families as to quantity or quality; they were treated alike. There was no change in the mode of this distribution of supplies from 1880 until the time of hearing the evidence, except that in July, 1893, the trustees, finding that the society was losing money in keeping the society store, sold the store to Wm. H. Breitenstein, who had been employed there until that time; and from that time on, the supplies for the members, which, prior to that time, had been kept at the store, were kept at the general office of the society in the Great House, and distributed to the members from there, instead of from the store, as previously. But no change was made in the mode of distribution, or the quantities distributed. During all this time there were no complaints from any of the members, of the quality or quantity of the supplies furnished them—except by Henry Feucht, who complained about the shoes, and by Julius

Stickel, for whom nothing was good enough, but whose principal complaint was that he at one time got spoiled liver-pudding (420); which occurred through a mistake of the butcher's, and which all the members of the society had received at the same time. Both Feucht and Stickel withdrew, with their families, from the society in the spring of 1893; and none of the present members have made any complaint of any deficiency in their supplies, either as to quality or quantity, or of any inequality among the members in any way. (See the testimony of Henry Breitenstein, pages 1854-5; of Rudolph Wagner, pages 2015 to 2019, 2024, and 2053 to 2056; of W. H. Breitenstein, pages 2064 to 2068; of Johanna Hermansdoerfer, pages 2091 to 2093; of Fredericka Muntz, 2099 to 2104 and 2114; of Gottlieb Nagle, pages 2156-7; of John Duss, pages 228-9; of Samuel Sieber, pages 2358-9; of Caroline Molt, pages 2431-2; Kathrina Nagle, pages 2454 to 2456, and Moritz Fredericks, pages 692-3. And as to mode of distribution of supplies in 1865 (see testimony of Henry Feucht, page 167).

There is no evidence that Duss and his family are enjoying any luxuries or living in any manner differently from or more expensively than the other members of the society; or that the aged and infirm are obliged to be content with the bare necessities of life.

The master, therefore, finds that there is no inequality or discrimination in the mode of life or treatment of the members of the society, and that the averments of this paragraph are not true.

In the twenty-fourth paragraph of the bill, it is averred that John S. Duss is a man of bad moral character, and is, as such, utterly unfitted to act as the spiritual adviser and head of a religious society; that he holds religious views utterly at variance with the creed of the society, and that he has been guilty of the gravest duplicity with his cousin, Fredericka R. Kroll, a young girl of some eighteen years of age—formerly a member of his household—in secretly taking her to the Teed residence in Chicago, where she is continually surrounded by the depraved and wanton women who compose the majority of Teed's so-called "angels." The whole of this paragraph is denied in the answers.

The only evidence on the part of the plaintiffs in support of the first of these averments, is the testimony of John Weggle, and of the witnesses called by them to corroborate the charges made by him.

Weggle was a laborer, who came to Economy on June 19th, 1891, and afterwards brought his family, who arrived there September 21st, 1891. He was first called and examined as a witness for the plaintiffs on April 11th, 1895, and afterwards recalled for further cross-examination on June 3rd, 1895. On his first ex-

amination he testified substantially, that in going for the purpose of renting a house for his family, to see Mr. Duss at the Great House, between six and seven o'clock of an evening in the beginning of August, 1891, he found the front door leading into the main hall of the house, and the door leading from that hall into the parlor or consulting room, both standing wide open, and, walking in without knocking, he saw Duss in the act of criminal intercourse with a girl whom he did not know, but afterwards learned was Fredericka Kroll, who, upon his knocking on the door, ran out through the back door of the room. That at this time it was daylight, the shutters on the windows opening on the street were open, the blinds drawn up and the other doors of the room open. After some conversation with Duss about renting the house, and without any reference either by Duss or him to what he had seen—except Duss saying to him that that was his cousin that he had been cutting up with a little, and he should say nothing about it—he left, and never mentioned the matter to anyone until Mrs. Woelfel and Mrs. Kroll, the mother of the girl, were at his house in June, 1894, when he told them of it.

When Weggle was recalled for further examination on June 3rd, 1895, he testified that all he had testified to on April 11th, 1895, in reference to Duss and Ricka Kroll was untrue and a lie made up by him; that he had never seen anything of the kind testified to by him, or any improper conduct on the part of Duss, either with Ricka Kroll or any other person. All the testimony of the other witnesses on the part of the plaintiffs, in reference to this matter, was mere hearsay and rumor, apparently based on the story told by Weggle to Mrs. Woelfel and Mrs. Kroll. It also appeared from Weggle's testimony and other evidence that he had on March 2nd, 1894, brought a suit against the society for damages for injuries received by him (viz., a broken leg) in its employment, in which suit a verdict had been rendered for the defendant on February 7th, 1895, and that on June 5th, 1894, he had brought suit against the society for wages before Alderman McMasters, which was decided against him on June 11th, 1894. This was about the time he told his story to Mrs. Woelfel and Mrs. Kroll.

Weggle's first testimony was directly contradicted both by Fredericka Kroll (testimony, pages 1171-2) and John S. Duss (page 2646). It was also shown to be improbable, if not impossible to be true by the testimony of W. T. Morris (pages 1103-4); James R. Elliott (pages 1143 to 1149) and Exhibits Nos. 40, 41, 42, 43 and 44, testified to by them, and of Magdalena Schwer and Charles Miller—showing that the room testified to by Weggle was the public parlor or reception room, into which all persons calling at

the Great House were shown; that it was used as a passage way by the occupants of the house in going from the main hall or dining room to another hallway on the opposite side of the room, across which were the rooms occupied by Mr. Henrici, the stairway to the second floor, and other rooms; that Mr. Henrici was in the regular habit of walking for exercise until he had taken one thousand steps every evening immediately after supper, the hour for which was in winter six o'clock and in summer half-past six, and in taking this exercise he walked back and forward between his room and the dining room through the parlor, the room spoken of by Weggle It was also shown by the testimony of Mrs. Barbara Laurent (page 1109), Magdalena Schwer (1134 to 1137), Fredericka Kroll (1168 to 1170, 1215 to 1217 and 1220), Rudolph Wanger (1191 to 1200), Mrs. Emertz (pages 1128 to 1131), William Breitenstein (pages 1245 to 1250), and Mrs. Elizabeth Ott (pages 1128 to 1131), that Fredericka Kroll was not in Economy in August, 1891, having left there on July 28, 1891.

There is no other evidence of immortality on the part of Duss; and the master, therefore, finds that the charges made by Weggle agains him and Ricka Kroll are untrue and entirely without foundation in fact; and that the averment that Duss is a man of bad moral character is not sustained by the evidence.

There is no evidence that Duss holds religious views at variance with the creed of the society, and he denies it in his answer.

As to the third of the above averments, the master finds that Fredericka Kroll came to this country and to Economy with her parents in 1880, and after living a few months with her parents, who had a family of eight children, went to live with her aunt, Mrs. Caroline Duss—her father's sister, and the mother of John S. Duss, in Economy; and went with her to the Great House, when Mrs. Duss was placed in charge of it as housekeeper upon the death of Miss Rapp, early in 1890, and was there employed doing general housework, until she left in July 1891. After she arrived at the age of eighteen, in February, 1891, she wanted to and talked of leaving Economy and learning a trade of some kind, but had not decided what trade; and while Mrs. Emertz, a member of the Teed Society, was visiting Mr. Henrici at the Great House in 1891, she talked with her on the subject. At Mrs. Emertz's suggestion, she concluded to go with her to Chicago, and there learn the trade of compositor in the printing office of Teed's society. Mr. Henrici was informed of her intention, and he approved of it. On July 27th, 1891, she received and receipted for wages then due her from the society. The next day Mrs. Emertz, intending to stop at Zoar, Ohio, left on the morning train for Chicago, and Fredericka

Kroll on the evening train. Mr. Duss, at the request of Mr. Henrici, went with her. She had not told Mr. Duss until that morning of her intention to go to Chicago, and he had not been consulted about it. Mrs. Emertz joined them on the train at Massillon, and they continued together to Chicago, and there went together to Teed's house. Mr. Duss left Chicago that day or the next morning.

There was no evidence that Mr. Duss either suggested or advised Fredericka Kroll to go to Chicago, or that she went there for any improper purpose, or that there was any impropriety in his going with her. While there she went into the printing office and learned the trade of type-setting; and returned to Economy in the fall of 1894. There is no evidence that while there she was surrounded by depraved or wanton women; nor any evidence whatever of the character of the members of Teed's society, or that there was any immoral or improper conduct on her part while there.

The master, therefore, finds that none of the averments of the twenty-fourth paragraph are sustained by the evidence, and that they are not true.

In the twenty-fifth paragraph of the bill it is, among other things, averred "that recently said Harmony Society has become dissolved as aforesaid."

It may be noticed here that all the matters alleged in the bill, from the tenth to the twenty-fourth paragraphs, both inclusive, as those by which the society has become dissolved, are the alleged improper conduct and acts of Duss alone, and not of the other members of the society, either individually or jointly, as a body or society, and therefore if true as alleged could not, as has been already shown affect the rights or interests of any of the members of the society except Duss himself. This is virtually admitted by the last clause of the third paragraph of the bill, and by the last clause of this twenty-fifth paragraph, which avers "that by reason of the facts hereinbefore set forth, the said last members" (viz., the defendants, as stated in the third paragraph) "*except the said Duss and wife*, are now tenants in common of all of said lands and tenements, and entitled to partition thereof in proportion to their respective interests." Why Mrs. Duss, who is a member against whom no charge has been made, should be excluded from any interest in the property is not shown or explained.

In this paragraph it is also averred that all the purposes and practices of the Harmony Society established by its founders, has been abandoned.

In support of this averment, and in addition to the matters

charged in the preceding paragraph of the bill and which have been hereinbefore considered, the plaintiffs claimed and offered evidence for the purpose of showing that Christianity had been abandoned by the practice of drunkenness and adultery by the members of the society, from the time that Mr. Duss became trustee in 1890, until the filing of the bill in June, 1894; that celibacy had been abandoned; that the use of the peculiar dress formerly worn by the members had been abandoned.

Henry Feucht was one of the principal witnesses on the part of the plaintiffs all through the case, and he and Julius Stickel were the principal witnesses for the plaintiffs in support of the above propositions.

Henry Feucht's grandparents, on the mother's side, were members of the society, and were married in the society by Father Rapp, in 1806, and continued members until their death. His parents were also members; they left the society in 1829, and were married; returned to membership in the same year, and continued members until their death. Henry, his brother Benjamin, and two sisters, Terza, and another who died in infancy, were all born in the society during the membership of their parents—Tezra in 1830, Benjamin in 1834, and Henry in 1837. When the other sister was born was not stated. Benjamin was admitted to the society on February 14th, 1857, and Henry on February 15th, 1860, as appears by their signatures to the constitution (Exhibit No. 18, pages 101 and 103). They both withdrew from the society in 1865, Henry receiving from Mr. Baker, trustee, $1,050. Henry lived in different places in Ohio, until he returned to Economy with his wife and children, on October 18th, 1888. Benjamin returned with his wife about the same time. Henry and his brother were required to serve a probation before re-admission to membership. Henry, during his probation, was employed at the brickyard near Leetsdale, until he was removed on account of charges of defrauding the society of money, made against him by Mr. Kirschbaum, one of the Board of Elders. Mr. Kirschbaum opposed his admission to membership on account of an anonymous letter, charging Mr. Lenz, one of the trustees, with immoral conduct, which Mr. Kirschbaum accused Henry of having written; and also on account of stories which he accused Henry of telling about him. His admission to membership was also opposed by several of the members of the society not on the Board of Elders. Kirschbaum was killed in a gas explosion on January 2nd, 1890. After his death Henry appears to have satisfied Mr. Lenz—then Junior Trustee—that he was not guilty, and on the Sunday following Kirschbaum's death, Mr. Lenz announced in church that Henry and his brother, Benjamin, and their

wives would be admitted as members; but in doing so, required them to stand out in front of the congregation, and in a public address rebuked them severely for their conduct while formerly members, and required them to promise to be of good behavior thereafter, as a condition of their forgiveness and admission. (See testimony of Feucht, pp. 256, 276; of Sieber, p. 2376; of C. Moult, p. 2439, and of J. S. Duss, p. 2607 to 2609). After Kirschbaum's death, Henry was sent back to the brickyards, and continued there until he was removed, on account of trouble there, by Henrici and Woelfel, trustees, and by them placed in charge of the orchards and bees. While there he appears to have created trouble, as when, upon the death of Woelfel, in July, 1890, Mr. Henrici proposed him as a member of the Board of Elders, the other members of the board protested so strongly that Mr. Henrici abandoned the idea, as has been hereinbefore stated. He continued to be a disturber of the peace of the society until, on April 25th, 1892, he was expelled from the society by the Board of Elders, and afterwards reinstated, in the manner and for the reasons hereinbefore stated. And afterwards, with his brother and others, he filed a bill for the dissolution of the society, as has been hereinbefore stated.

Henry Feucht, all through his testimony, shows a bitter animosity to J. S. Duss (see especially p. 294). In his testimony he was disposed to exaggerate. He considered what he had heard from others as personal knowledge, and constantly testified to it as such, even after his attention had been called to it. (See his testimony, pp. 215, 217, 250).

Julius Stickel is a stonemason. He was born in 1864 in Russian Poland; came to America in 1887, and to Economy on March 28th, 1888, and was employed there. He was admitted as a member of the society at the same time with the Feuchts, on February 14th, 1890. He was a friend of Henry Feucht's, and although one of the defendants in the Feucht bill, assisted the plaintiffs in it—in their application for an injunction and receiver—with his affidavit. He withdrew from the society on March 29th, 1893, while that bill was pending. He also considered what he heard from others as personal knowledge and testified to it as such.

In considering the charge of drunkenness, it is to be remembered that the Harmony Society was not a total abstinence society; that at the time it was founded, and its purposes and practices established, the opinions and practices of the people generally, and of people of this district especially, as to temperance and the use of intoxicating liquors, were entirely different from those of the present day, as is shown by all accounts of those times; that the original members of the society, and the majority of those who afterwards

joined it, came directly from Germany, a wine and beer drinking country, and that they brought with them the habits and customs of their native land; that from the earliest times of which there is any evidence in this case the society manufactured and sold whiskey, wine, beer and cider, and that wine, beer and cider were regularly distributed to the members and employes as a part of the necessary supplies for themselves and their families, and that all were regularly and habitually making use of these liquors; and that the furnishing and use of these supplies of liquors has been kept up to the present time as a part of the old-established customs and practices of the society. That under such circumstances some of the memmers should sometimes become intoxicated, and some even habitually intemperate, might be expected. The question in this case is, not whether there was any intoxication or intemperance in the society during the trusteeship of Mr. Duss, but rather whether intemperance had so increased in that time over what it had been previously as to amount to an abandonment of the purposes of the society, as shown by their previous practices and habits in this respect, and whether such condition continued to exist at or about the time of the filing of the bill in this case.

When Duss became Junior Trustee in July, 1890, there were forty-five members. Of these the only ones charged with intemperance are Gottfried Lauppe, Jacob Nicklaus, Blazsius Platz, Sigismund Stiefvater, Gottlieb Riethmueller, Hugo Miller, Herman Fischern, Conrad Hermansdoerfer and Lena and Philipina Wolfangel.

Of these, Henry Feucht testified (pp. 316 to 320) that Lauppe, Nicklaus, Platz, Stiefvater and Riethmueller were habitual drunkards, and that he knew of no other instance of drunkenness.

Julius Stickel testified (pp. 460 to 465) that Lauppe had become a drunkard; Stiefvater was drunk every day; Platz was so drunk he could hardly come home with the wagon when he was farming boss; Riethmueller was always, so to say, full; Fischern always had a little high; Lena and Philipina Wolfangel drank too much. That these were all the intemperate members he knew of.

All the other testimony on the part of the plaintiffs and defendants in reference to the intemperance of their members is substantially as follows, viz.:

As to Lauppe—

For the plaintiffs: Florence Miller, p. 534, saw him drunk more than once. For the defendants: H. Breitenstein, p. 1968, denies that he was an habitual drunkard. Gottlieb Nagle, p. 2161, worked under him on the farm for two years; never saw him drunk. Katrina Nagle, p. 2469, never saw him drunk. John S. Duss,

2601, 2702, never saw him intoxicated. George Earle, p. 1368, never saw him drunk. K. R. Wagner, p. 2036, never saw him under the influence of liquor. Fredericka Muntz, p. 2111, he was not a drinking man. John Stoeffel, p. 2212, never saw him drunk.

As to Nicklaus—

On the part of plaintiffs: Florence Miller, pp. 534-5, saw him drunk more than once. John Weggle, p. 619, saw him much intoxicated in spring of 1893.

On part of defendants: J. S. Duss, p. 2615, never saw him intoxicated but once. Wm. H. Breitenstein, p. 1317, never saw him drunk. George Earle, p. 1368, never saw him drunk. J. T. Brooks saw him intoxicated once. Stickel did not include him in his list of intemperates.

As to Platz—

On part of plaintiffs: John Weggle, p. 619, saw him much intoxicated in spring of 1891.

On part of defendants: J. S. Duss, pp. 2627, never saw him intoxicated.

As to Stiefvater—

On part of plaintiffs: Florence Miller, p. 335, "don't believe he ever drawed a sober breath." A. W. Houser, p. 573, saw him drunk on a number of occasions. John Weggle, p. 619, saw him very much intoxicated.

On part of defendents: J. S. Duss, p. 2158, he drank too much.

As to Riethmueller—

On part of plaintiffs: Florence Miller, p. 534, saw him under the influence more than once. J. B. Brysen, p. 568, saw him so drunk in the cellar that he staggered. A. W. Houser, p. 573, saw him drunk on a number of occasions. John Weggle, p. 619, never saw him intoxicated.

On part of defendants: J. S. Duss, pp. 2161-7, never saw him intoxicated. John Reibert, p. 1340, never saw him drunk. George Earle, p. 1368, never saw him drunk. Henry Hice, p. 1630, never saw him under the influence of liquor; p. 1677, have smelt liquor on him, but he knew what he was doing. Henry Breitenstein, p. 1976, never saw him that he would be taken for a drunken man. K. R. Wagner, p. 2058, never saw him drunk.

As to Hugo Miller—

On part of plaintiffs: Jacob Catshall, pp. 450-60, saw him when he thought he was a little more than natural. Feucht did not mention him as intemperate.

On part of defendants: Wm. H. Breitenstein, p. 1317, never saw him drunk.

As to Fischern—

None on part of plaintiffs, except Stickel.

On part of defendants: Fredericka Muntz, p. 2011, he was not a drinking man.

As to Hermansdoerfer—

On part of plaintiffs: Not mentioned by Feucht or Stickel. A. W. Houser, p. 573, saw him drunk on a number of occasions. John Weggle, p. 619, saw him much intoxicated in spring of 1894.

Of these members the master finds that Sigismund Stiefvater was the only one that was habitually intemperate, or that could be called a drunkard; and he had been punished by the Board of Elders for his intemperance by removing him from the charge of the blacksmith shop and putting him to work on the farm. The others were not habitually intemperate, and very seldom intoxicated; and some of those charged, viz.: Fischern, Hugo Miller and the Wolfangels, were not shown to have even been intoxicated.

But four of those charged with intemperance, viz.: Riethmueller, Hermansdoerfer and the Wolfangels, are defendants in the bill or were members of the society at the time it was filed. The others had either died or withdrawn from the society more than a year before this bill was filed. Fischern died in March, 1892, and Lauppe in the spring of 1893. Miller withdrew March 8th, 1893; Nicklaus, May 5th, 1893; Stiefvater, May 17th, 1893, and Platz, June 19th, 1893—all at the time of the Feucht litigation.

From the earliest times within the memory of the witnesses down to the time when Duss was elected Junior Trustee in 1890 there has always been some intemperance among the members. After his election it did not increase, but decreased; and there is no evidence that at or for some time before the time of the filing of the bill in this case there was any intemperance among the members of the society—except the testimony of John Weggle, who is not a creditable witness—that he saw Hermansdoerfer intoxicated in the spring of 1894.

Duss himself is and always has been a total abstainer, and opposed to drinking and drunkenness.

The only persons who charged that there was adultery in the society, and testified in support of those charges, were Henry Feucht, Julius Stickel and John Weggle; and the only persons accused of the crime are John S. Duss, Gottfried Lauppe, Jacob Nicklaus, Sigismund Stiefvater and Mrs. Sieber, wife of Samuel Sieber, Junior Trustee in 1893.

The charge against Duss, made by Weggle, has been already fully considered.

Henry Feucht, in his examination in chief stated, p. 191:

"Adultery and so on, all such things, were carried on in the society, too mean to mention right here in court." In his cross-examination, pp. 323 to 331, as to this charge, he testified as to Lauppe: That in the summer of 1892 a letter was brought to him by a hired man for translation. It was a .confession, signed by a Catholic priest and a doctor in a hospital, from a dying woman to her husband, asking for forgiveness; that she had been approached by Gottfried Lauppe: that if she didn't give in to his wishes, her husband would get his discharge; and she wished he would forgive her. Feucht told the man to take it to Julius Stickel and tell him to have it translated and present it to Mr. Duss. Then, p. 324, as to a conversation with John Scheid about Mr. Duss and Ricka Kroll. On page 325, that he saw Jacob Nicklaus time and again "go into where there were certain women living and stay there at night; and the talk was that he went up to meet women there that he was going with every night that he had a chance." On page 328, "Mrs. Samuel Sieber was a woman of entirely immoral habits, and she kept a continual boarder in her house." On page 329, "I seen Mrs. Sieber myself sitting with two burly-looking men one evening, drinking beer, in a house by herself." He also testified that these were all the instances he knew of.

Julius Stickel testified as to these charges, substantially as follows: (See his testimony in chief, pp. 404 to 412, and cross-examination, pp. 491 to 505.)

In relation to Mrs. Sieber, who was admitted as a member on February 15th, 1892, he said he had heard some talk about Mrs. Sieber, and that in the fall of 1890, he hid himself in the back yard of her house and watched her. When he passed the window was open, the blind up, and the light good; he saw a man named Herman Knupp go in; the blind was pulled down and the light turned down; Knupp was there for a good while, and came out. That was all he saw himself. In the same year, 1890, a paper-hanger named Jacobs, told him: "Mrs. Sieber took me around the neck and went over herself, over to the bed, and bent me down and had such a fun with me." In the winter of 1892-3 after Henrici died, a girl who was living with Mrs. Sieber, and slept in the room with her, told him that Mrs. Sieber sent her to bed early, and a blacksmith came in and looked in her face if she was asleep, and then went over to Mrs. Sieber in the bed. This girl lives in Sewickley. This was all he knew about Mrs. Sieber. He said he told these things to Mr. Duss.

As to Lauppe, he testified that the letter containing the dying confession, testified to by Feucht, was brought to him by the

woman's husband. He first went with it to Sieber, and told him the story; then Lauppe came, and he told him, and said to him: "Now, this man comes here and tells this story that you yourself had to do with this man's woman," and he didn't say no or yes. And when he didn't say no or yes or something, Stickel concluded he was guilty. That Lauppe refused to send the man to court. "And then he (Lauppe) went after the woman and begged her to stay in Economy;" that he knew he did because the woman afterwards told him about it.

As to Stiefvater, he testified that he saw Stiefvater upstairs in a room with a woman, when they pulled down the blinds. When Stiefvater left the society, they were married, and he was told that three or four months after they were married she had a baby.

These were all the instances of adultery that he knew of.

John Weggle, testified, p. 619, as to Stiefvater that he saw him in 1891 walking down the pavement with a girl on each arm.

This is substantially the whole testimony in the case in support of the charge made by Feucht, as above stated, except that in reference to Duss and Ricka Kroll, which has already been found untrue. The greater part of it is hearsay; and altogether it is wholly insufficient to sustain the charges against the individuals accused or against the society as a whole. Lauppe died early in 1893; Nicklaus and Stiefvater withdrew in May, 1893, and Mrs. Sieber in July, 1893—long before the filing of the bill. And none of the present defendants are accused. From 1890 to 1895 the village of Economy was very quiet and orderly.

In the first paragraph of the bill, it is averred that

> "About the year 1807, the said community added to their doctrines and practices, that of celibacy, as being necessary to the proper preparation for the coming of Christ, and thenceforth and until lately, as hereinafter stated, they lived as if single and unmarried, and abstained from marriage."

This is denied in the answer; but it is admitted that in 1807, different members advocated the efficacy of celibacy, and since then this doctrine has been followed and practiced by a great number—if not all of the members of the Harmony Society.

As has been hereinbefore stated, the members of the society were not required to, and did not make any promise or agreement, other than those contained in the written agreements signed by them, and which were called the Constitution of the Society. These agreements contain their whole contract with each other and with the society. None of these agreements requires the practice of celibacy by the members, or makes it a condition of ad-

mission to the society. None of them contains anything tending to show that the adoption of the doctrine of celibacy, or its practice, was required of the members. On the contrary, the agreements of 1805 and of 1827, both contain provisions which would lead any one reading them to an entirely different conclusion. These provisions are contained in the second, third and fourth articles of the agreement of 1805, and in the second, third, fourth and fifth articles of the agreement of 1827; and which have been reaffirmed in all the subsequent agreements. These provisions, as contained in this last agreement, are as follows, viz.:

"Article 2d. We do further covenant and agree to and with the said George Rapp and his associates" * * "holding ourselves bound to promote the interest and welfare of the said community, not only by the labor of our hands, but also by that of *our children, our families*, and all others who now are or hereafter may be under our control

"Article 3d. We do expressly covenant and agree to and with the said George Rapp and his associates, that we never will claim or demand, either for ourselves, *our children*, or for any one belonging to us directly or indirectly, any compensation, wages or reward whatever, for our or their labor or services rendered to the said community, or to any member thereof, but whatever we or our *families* jointly or severally shall or may do, all shall be held and considered as a voluntary service for our brethren.

"Article 4th. In consideration of the premises, the said George Rapp and his associates do by these presents adopt the undersigned jointly and severally as members of the said community, whereby each of them obtains the privilege of being present at every religious meeting, and of receiving not only for themselves, but also for *their children and families*, all such instruction in church and school as may be reasonably required, both for their temporal good and for their eternal felicity.

"Article 5th. The said George Rapp and his associates further agree to supply the undersigned, severally, with all the necessaries of life, as clothing, meat, drink, lodging, etc., for themselves and *their* families." * * * "And if at any time after they have become members of the association, *the father or mother of a family* should die, or be otherwise separated from the community, and should leave *their family* behind, such *family* shall not be left orphans or destitute, but shall partake of the same rights and maintenance as before, so long as they remain in the association, as well in sickness as in health, and to such an extent as their circumstances may require."

These provisions recognize marriage and the family relations

as existing, and the intention that they should continue to exist in the society. It was adopted twenty years after the time it is averred in the bill, that the community added to their doctrines and practices, that of celibacy.

Although celibacy was not recognized by any of the agreements, or Constitution of the Society, the practice seems to have been adopted to a certain extent. Although there was a good deal said in the testimony about the society being a celibate society, the only rule or practice that appears to have been adopted and acted upon was that members were not allowed to marry in the society. If they determined to marry, they had to leave it to be married. But married persons with their families—whether former members or not—were admitted to membership, and allowed to live together with their families; and their children and families were provided for and supported by the society, in accordance with the provisions of the agreement of 1827, above quoted. And this appears to have been the practice at least since 1826 or 1827, when Christopher Schwartz and his wife were admitted and allowed to bring with them a large family of children, the oldest only thirteen years of age. In 1829, the parents of Henry Feucht, being members, left and were married, returning to the society the same year and continuing members from that time until their death, and having born to them, in the society and during their membership, four children, as has been already stated. Henry Feucht and his brother Benjamin also left the society, and, returning afterwards with wives and families, were admitted to membership, and continued to live at Economy with their wives and families until their withdrawal in 1893. Julius Stickel, his wife and family of three children, J. S. Duss and his wife and family, Hermansdoerfer and his wife, Lenz and his wife, Samuel Sieber and his wife, are other instances of married people with families being admitted to the society and afterwards living together. Julius Stickel testified (pp. 450-1) that while he was there (from 1888 to 1893) the married people, both members and others, always lived together in the same house with their families. And from the documents in evidence it appears there has always been a number of married people members of the society. The deed of Frederick Rapp, attorney in fact of George Rapp and his associates, to Ziegler, dated May 6th, 1815, and recorded on March 11th, 1816 (Exhibit No. 86), recites his power of attorney, dated June 14th, 1814, as signed, sealed and acknowledged by George Rapp and his associates naming them, to the number of four hundred and nineteen persons, two hundred and

two of whom are married men and their wives, including them *George Rapp and Christina, his wife.*

The power of attorney to George Rapp, dated July 5th, 183-, in evidence as "Exhibit No. 85," is signed and acknowledged by four hundred and two persons, one hundred and seventy-seven of whom are men and two hundred and twenty-five women; and the certificate of acknowledgment state "that the woman having husbands at the time of signing and sealing of said instrument, were severally examined separate and apart from their said husbands."

There is attached to page 72, of Exhibit No. 18, a memorandum, dated February 12th, 1845, in the same handwriting as that on the page, apparently—stating the number of members of the society as one hundred and fifteen unmarried men, twenty widowers and twenty-nine married men, and one hundred and twenty-eight unmarried women, forty-nine widows and twenty-nine wives—footing up one hundred and sixty-four men and two hundred and six women, and showing fifty-eight married members.

The agreement of August 12th, 1847 (Exhibit No. 83) is signed and acknowledged by two hundred and eighty-eight members, with the separate acknowledgment of twenty-three married women, showing forty-six married members.

The agreement of April 4th, 1890 (Exhibit No. 19), is signed and acknowledged by forty-five members, twenty-six women and nineteen men, with the separate acknowledgment of five married women, showing ten married members.

The agreement of December 20th, 1892 (Exhibit No. 49), is signed and acknowledged by thirty-three members, fifteen men and eighteen women; separate acknowledgments of four married women. Henry and Benjamin Feucht and their wives, members, refused to sign this agreement; there were therefore then twelve married members.

The agreement of April 11th, 1894 (Exhibit No. 80), is signed and acknowledged by eighteen members—five men, thirteen women—with separate acknowledgments of two married women, showing four married members.

These figures show a comparative increase in the practice of celibacy in the society, rather than a decrease or abandonment of it.

The master, therefore, finds that the practice of celibacy was not one of the purposes for which the society was founded, but in the manner practiced in the society was only a custom or rule of conduct, which might be changed or abolished by the society

without an abandonment of its purposes; and, further, that there has been no abandonment of celibacy, as it has been practiced in the society from its first adoption.

There was much evidence on the part of the plaintiffs showing that the members of the society formerly wore a peculiar dress, so different from that generally worn that when seen on the streets of the city, they could be known by their dress to be members of the society, and that now they no longer use this peculiar dress, but were clothed like other people—for the purpose of showing an abandonment of the purposes of the society.

The peculiarity of their dress was, that when they came to the city of Rochester, the men wore blue cloth suits, somewhat old-fashioned, with tall hats with wide rims; and the women, blue silk dresses, differing from the fashions worn, and peculiar bonnets. This style of dress, and the change from it, is explained by the fact that formerly, when the members of the society were greater, they manufactured largely silk, cotton and woolen cloths, had tailors, dressmakers and hatters in the society, and had all their clothing made in Economy, of goods of their own manufacture. Their best suits, which they used when visiting the city, were generally made of blue cloth and blue silk. Their clothing, being of home manufacture, and they seldom leaving Economy, the style of their dress became old-fashioned and peculiar. Their manufacture of cloths of all kinds ceased in the sixties, and of hats somewhat later; and when the stock of goods they had left on hand became exhausted, their numbers had become reduced, and it became cheaper to purchase their clothing than to manufacture it themselves; and, by doing this, their dress became the same as that of other people, and all its peculiarities disappeared.

There is nothing in this change in their dress to show an abandonment of the purposes of the association.

All the other matters averred in the twenty-fifth and twenty-sixth paragraphs of the bill have been already considered.

Although there is no averment of it in the bill, and although the dissolution of the society, through the abandonment of the purposes for which it was founded, is alleged to have occurred within a recent period, it was argued for the plaintiffs that by the making of the agreement of 1836, declaring that all the property of the society "shall be deemed now and forever joint and indivisible s k," the principle of community of goods had ceased to exist, and was an abandonment of the purposes of the society; and also, that by the agreement of 1847, the patriarchal government was changed into that of a trading corporation, and was

an abandonment of the purposes of the society, which dissolved it.

If the contention of the plaintiffs is true, then the society became dissolved, and whatever rights in its property the plaintiffs, or those through whom they claim had, immediately vested upon the adoption of those agreements. But only the heirs of those who had not joined in them would have any right to complain; all others would be stopped by the act of their ancestor in joining in the agreements. There remain only the heirs of those who died in the society before the making of the agreements. If the making of agreements was such an abandonment of the purposes of the association as would cause its dissolution, their right to enforce that dissolution and to claim their share of its assets would accrue immediately. These agreements were entered into, the one seventy and the other fifty years ago. The plaintiffs have shown no cause for the delay in enforcing their rights. They have allowed the society to continue in existence and to carry on its business under these agreements for all these years, without making any claim or protest. The master is of opinion that, under the principles declared in the case of Spiedel v. Henrici, 120 U. S. R., 377, hereinbefore cited, such of them as might have had a right—if the plaintiff's contention is correct—are barred by their laches, and should not be allowed to enforce their claims at this late day.

The master, for the reasons hereinbefore set forth, finds that there has been no abandonment of the purposes for which the Harmony Society was founded, and that the said society has not been dissolved by reason of any such abandonment, and that the plaintiffs are not entitled to the relief prayed for in the bill; and respectfully recommends the annexed form of decree.

MASTER.

FORM OF DECREE.

And now, to-wit, 1898. This cause came on to be heard at this term of Court, upon bill, answer, testimony, and report of master and exceptions thereto, and was argued by counsel; and thereupon, upon consideration thereof, it is ordered, adjudged and decreed that the plaintiffs' bill be and is hereby dismissed, at their costs, including commissioner's and master's fees, said costs, however, to be paid in the first instance by the defendants.

EXCEPTIONS EX-PARTE PLAINTIFFS TO MASTER'S REPORT.

SCHWARTZ *et al.*
vs.
DUSS *et al.*

And now, March 31st, 1898, come Shiras & Dickey and S. Schoyer, Jr., attorneys for plaintiff, and file the following exceptions to the report of the master in the above entitled cause, reserving to themselves the right to hereafter file other and further exceptions.

First. To the recommendation for a decree and to the form of decree.

Second. Because the master has failed to find that, under the bill, answer and evidence, that the plaintiffs are entitled to the several reliefs prayed for in their bill, and in not recommending a decree therefor and a form of decree therefor.

Third. To so much of his report as finds that the plaintiffs have no interest whatever in the property of the society, and are not entitled to any part or share upon a dissolution.

Fourth. To so much of the master's report as holds that the agreements of 1805 and 1827 are substantially the same, and that a new plan of government by the agreement of 1847 was made necessary by the death of Rapp.

Fifth. The master erred in not finding that the agreement of 1847 destroyed the communism of the property and the patriarchal form of government provided in the agreements of 1805 and 1827, and substantially therefor a capitalistic system assimilated to the forms usually adopted for the management of capital and its employment for profit under the direction of a directory and presiding officers.

Sixth. The master erred in not finding that by the agreement of 1847, all who were then members of the society, and who afterwards became members of the society, became owners in and to an equal undivided share of all the property of the said society, real and personal, which by the agreement of 1847 was converted into a joint and indivisible fund, and that, therefore, upon the event of the dissolution of the association from any cause whatever, in the absence of provisions in that agreement for the distribution of said fund, the said joint and indivisible fund is to be distributed among all persons dying in the society, and the legal heirs and representatives of those who died in the society.

Seventh. The master erred in not finding that there was no joint tenancy with right of survivorship or tontine system provided

for by any of the agreements referred to in the testimony; and in not finding also, as a special fact, that none of the agreements made any provision for a winding-up of the affairs of the society, or for a distribution of its proceeds in the event of a dissolution of the said society.

Eighth. The master erred in applying the Pennsylvania cases, namely, the case of Shrieber *vs.* Rapp, 5th Watts, 351; and the case of Buehler *vs.* Gloninger, 2 Watts, 226; and the case of Nachtrieb *vs.* Harmony Society, as having no bearing upon any of the questions involved in this case, as all of the said decisions were made before the entering into the agreements of 1847.

Ninth. The master erred in finding that the plaintiffs, under the agreements hereinbefore referred to, have no claim on the property of the society through any of their ancestors.

Tenth. The master erred in holding that any inconsistency exists in the allegations of the 6th and 26th paragraphs of the plaintiff's bill, and says that the proper construction of the said 26th paragraph is that the trust is "contrary to public policy and void in law or equity."

Eleventh. The master erred in holding that the associates of George Rapp, in the original agreement of 1805, were named and ascertained by the deed of the 6th of May, 1815, and holding that the plaintiffs' objection as to perpetuities are unfounded.

Twelfth. The master erred in holding that the society as an unincorporated association had a right to take personal property.

Thirteenth. The master erred in holding that the plaintiffs are barred by time, assuming the legal inability of this society as an unincorporated association to take personal property.

Fourteenth. The master erred in assuming that there was no evidence of a conveyance to George Rapp or Frederick Rapp of the funds of the old society, but that they were purchased from outside persons; and also in his conclusion that if the trust was void, that the plaintiffs are not entitled to it, but that the same would revert to the grantors or go to the grantee clear of the trust.

Fifteenth. The master erred in finding that the various agreements did not create a limited or base fee; and also erred in not holding that the said agreements did create a limited and base fee.

Sixteenth. The master erred in finding that no resulting trust existed.

Seventeenth. The master erred in finding a sufficient and valuable consideration by the association to the members thereof for their interest in the property of the said association, because the said agreements disclosed a tenancy in common in the property of

an unincorporated association incapable of giving or receiving considerations as between the several tenants in common.

Eighteenth. The master erred in not holding that the scheme of the said association, as disclosed by its various agreements and its prevailing customs and methods, is against public policy, and therefore should be wound up, and the several reliefs prayed for in said bill should be granted.

Nineteenth. The master erred in finding that the Harmony Society has not been dissolved by the common consent of its members.

Twentieth. The master erred in finding that the Harmony Society had not been dissolved by the abandonment of the purposes for which it was founded.

Twenty-first. The master erred in finding that the abandonment of the purposes of the society, to cause a dissolution, must be an abandonment by *all* of its members.

Twenty-second. The master erred in finding that there was no conspiracy on the part of J. S. Duss to admit Dr. Cyrus Teed and the members of his Koreshan Society to membership in the Harmony Society, and to turn over to them all the property of the Harmony Society, as alleged in the 10th, 11th and 12th paragraphs of the bill.

Twenty-third. The master erred in finding that Duss was regularly and duly elected a member of the Economy Society according to the constitution and by-laws thereof.

Twenty-fourth. The master erred in finding that the remaining members of the Board of Elders, after the death of Kirschbaum, Wirth and Lenz, were not under the dominion and control of Duss.

Twenty-fifth. The master erred in finding the election of Duss, Nicklaus and Fischern to the Board of Elders was regular and valid.

Twenty-sixth. The master erred in finding that the large house at French Point was not built for Cyrus Teed or his society, as alleged in the 12th paragraph of the bill.

Twenty-seventh. The master erred in finding that Henry Feucht was not expelled from the society as the result of his active opposition and protest against the occupation of said house by the Teed Society, as alleged in the 12th paragraph, and because of his efforts to introduce reforms of abuses in the society, but that said expulsion was caused by the contumacious and intriguing acts on the part of Feucht.

Twenty-ninth. The master erred in finding that Duss did not prevent the admission of new members, as alleged in the 14th paragraph of the bill, and in not finding that the said Duss and his associates designedly permitted the membership of the society to

run down and diminish in order to vest the property of the society and the control thereof in himself and a few others under his control and dominion.

Thirtieth. The master erred in finding that the use of the funds of the society to the amount of over a million dollars was an authorized and proper application of said fund, and in finding that the same was not the result of a conspiracy between Duss, Hice and Reeves, as alleged by the 15th paragraph of the bill.

Thirty-first. The master erred in failing to find, as alleged in the 16th paragraph of the bill, that Duss and his confederates conspired to defraud plaintiffs and other members by executing the mortgage to Harry Darlington, trustee, of $400,000 upon the lands of the society.

Thirty-second. The master erred in finding that Henrici had full knowledge and comprehension of the terms of said mortgage and consented knowingly thereto, and that said consent and execution of the mortgage aforesaid was not made by Henrici when in *articulo mortis*, as alleged in the 16th paragraph.

Thirty-third. The master erred in finding that it was not the purpose of Duss *et al.*, by the foreclosure of the mortgage aforesaid, to obtain possession of the property mortgaged.

Thirty-fourth. The master erred in finding that the mortgage for $100,000 of May 1st, 1893, was within the powers conferred upon the trustees and was authorized by the agreement or instrument of December 20th, 1892. Exhibit No. 49.

Thirty-fifth. The master erred in not finding that the money represented by the foregoing mortgage was not raised for the purpose of raising money to induce members to retire, and that said money was so used; and in finding that the same was not borrowed for the purpose aforesaid.

Thirty-sixth. The master erred in finding that Duss did not, as charged in the 19th paragraph of the bill, by artifice, misrepresentation, coercion and fraud, induce or force all the active and more intelligent members of the society to withdraw, and that he did not secretly and fraudulently appropriate several hundred thousand dollars of the moneys of the society and use it in getting rid of these members.

Thirty-seventh. The master erred in finding that the payments to the retiring members were not made secretly, and that the same were within the powers of the trustees.

Thirty-eighth. The master erred in finding that Duss protested against the withdrawal of the retiring members, and that the withdrawal of these members was not caused by any scheme or action

of Duss, but by the filing of the Feucht bill against the society and the action of the plaintiff's in that bill prior to and after it was filed.

Thirty-ninth. The master erred in not finding that the withdrawal of retiring members was caused by the offers of money made by Duss and by threats and coercions used by him.

Fortieth. The master erred in finding that the averments of the 19th paragraph of the bill, in regard to the election of women to the Board of Elders, and the purposes for which the same was done are not sustained.

Forty-first. The master erred in sustaining the allegations contained in the 20th paragraph of the bill in relation to the conveyance to the Union Land Company.

Forty-second. The master erred in finding that the conveyance to the Union Company did not work a dissolution of the society, and that the same did not wholly terminate the existence of said society, not only as to the government thereof by the Board of Elders and by the members, but also as to the ownership of any property.

Forty-third. The Master erred in finding that said conveyance was within the powers and the authority of the trustees or the terms of the trust upon which they held the same.

Forty-fourth. The master erred in finding that the allegations of the 21st paragraph of the bill, which charges that Duss, for the purpose of winding up and dissolving the society, is endeavoring to compel the remaining members to depart by means of intimidation and oppression, are not sustained.

Forty-fifth. The master erred in finding that the charge of intimidation, oppression and cruel conduct on the part of Duss, as made in the 21st paragraph of said bill is not sustained.

Forty-sixth. The master erred in finding that the principle of equality and community of goods had not been abandoned, as charged in the 23rd paragraph of the bill.

Forty-seventh. The master erred in not sustaining the allegations of the 24th paragraph of the bill in regard to bad moral character of Duss, and in finding that he was not a man of bad moral character, and that he had not been guilty of the offense charged with Fredericka R. Kroll.

Forty-eighth. The master erred in excluding the offer of the record of the conviction and sentence of Weggle in the United States District Court, showing his conviction for perjury in the recantation of his testimony charging Duss with the commission of said offense with the said Fredericka R. Kroll.

Forty-ninth. The master erred in finding that the doctrine and

practice of celibacy had never been one of the essential principles or doctrines of the society.

Fiftieth. The master erred in treating the various acts alleged by the plaintiff as constituting dissolution of the society separately, and in not considering and passing upon the united effect of all said acts and matters, and in failing to find that the same, when taken collectively, would constitute a dissolution of the society or an abandonment of the purposes of the society.

Fifty-first. The master erred in placing the costs on the plaintiffs.

SHIRAS & DICKEY,
S. SCHOYER, JR.

SUR EXAMINER'S CERTIFICATE WITH RESPECT TO THE EXAMINATION OF THE WITNESS, JOHN S. DUSS.

ACHESON, *Circuit Judge.*

1. Whether or not the witness, John S. Duss, is to be regarded "as if under cross-examination," or as called generally by the plaintiffs it is not necessary now to decide. The effect to be given to his testimony will be determined hereafter. As he is manifestly adverse to the parties who have put him on the stand, they may interrogate him as a hostile witness.

2. Under the pleadings, it would strictly speaking be more regular for the plaintiffs in the first instance to show their proprietary interest in the estate and assets which are the subject matter of the bill and their right to an accounting, or to other relief based on ownership. But the Court will not prescribe the rigid observance of that order of proof. Some discretionary latitude should be accorded to the plaintiff's counsel as to the order in which the evidence shall be produced. They are, therefore, at liberty at this time to examine the witness as to the alleged dissolution of the Harmony Society, either by the common consent of its members or by the abandonment of the purposes for which it was founded; and also to show by him the plaintiffs' proprietary interest and right to the accounting prayed for. But with the alleged breaches of trust by Duss, as trustee of the Harmony Society or with his alleged personal misconduct the plaintiffs have no concern, unless they really have a proprietary title. It would, therefore, be premature and might be a sheer waste of time to take testimony in relation to those matters, until the plaintiffs have made out a *prima facie* case of ownership. When they shall have produced evidence tending to show their right to an ac-

count they will be permitted to examine Duss without restriction. In the meantime, his examination should be confined within the limits above indicated.

The plaintiffs, however, are at liberty (as are the defendants also) to apply to the Court during the progress of the examination for further instructions to the examiner.

And it is so ordered.

OPINION.

ACHESON, *Circuit Judge*:

The plaintiffs sue as heirs of certain persons who were formerly members of the Harmony Society, and who continued to be members until their voluntary withdrawal or death. The bill is against all the persons who composed the society at the commencement of the suit, namely, June 27th, 1894, the membership then embracing sixteen persons. The bill joins as co-defendants with the members of the Harmony Society Henry Hice, John Reeves and the Union Company, a corporation, the bill charging that these three defendants and the defendant John S. Duss, a member of the society and the Senior Trustee thereof, were acting together in a conspiracy to wreck and dismember the society and appropriate to themselves the entire assets of the society. The bill further alleges that all the purposes for which the society was founded and its established practices had been abandoned, and that by common consent the society had ceased to exist as an association and had been dissolved, and that "the assets of such dissolved association have reverted to the donors thereof, among whom were the ancestors and intestates of the plaintiffs. The bill prays for the appointment of a receiver and for the division and distribution of the assets of the society amongst the persons legally entitled thereto, including the plaintiffs. All the defendants have answered the bill. In their answers they all deny the above recited charges and allegations and all the averments in the bill upon which the plaintiffs' supposed right to relief rests; and they also deny that the plaintiffs have any interest whatever in the property of the Harmony Society or any right to intermeddle with its affairs.

After the cause was at issue the parties thereto entered into and filed a written agreement whereby they stipulated "to request the Court to appoint W. W. Thompson, Esq., as Examiner and

Master in this case; that to said Thompson shall be given as Examiner and Master the authority to hear and take all the testimony and to find all the issues of law and facts, and to report the testimony and such findings to the Court; * * * the parties reserving the right to be heard before this Court on exceptions to such findings, and reserving the right of each to take appeals from the decree, decision and judgment of this Court therein to the proper appellate Court with the same force and effect as though this cause had been decided by the Court below withuot the intervention of a master." And thereupon, at the request of all parties to the suit, the Court appointed Mr. Thompson Examiner and Master in the cause, with the authority specified in the said agreement.

In conformity with the agreement of the parties and pursuant to the order of appointing him, the master took a large amount of testimony and made findings, which are embodied in a written report to the Court. The master filed with his report the testimony and exceptions taken by the plaintiffs to his findings.

The cause has been heard upon the pleadings and evidence, the master's report and the exceptions thereto.

The report of the master is altogether adverse to the plaintiffs. He finds that the charges of conspiracy and misconduct and the allegations of abandonment of the purposes and established practices of the Harmony Society and of the dissolution of the society contained in the bill are not sustained by the evidence, and that they are not true. Upon every material question of fact the finding of the master is distinctly in favor of the defendants, and he recommends the dismissal of the bill.

The master's report covers the entire case, and evinces the most careful consideration of every question here raised. Nevertheless, the Court has felt it to be its duty to make an independent investigation of the facts and merits of the case; and therefore we have attentively read and considered the whole of the evidence. Avoiding, as needless, a particular discussion of the numerous exceptions to the master's report, we will briefly state our general views and conclusions.

The constitution of the Harmony Society is embodied and the general purposes of the association are set forth in a series of written agreements, executed in the years 1805, 1821, 1827, 1836, 1847 and 1890. These agreements were signed at their respective dates by all the then members of the society. By the agreement of 1805 the doctrine of community of property became and by the subsequent agreements continues to be a fundamental

principle of the society. Its acceptance is an essential condition of membership. By the constitution of the society individual ownership of property is renounced in favor of the community or society. The members have all things in common, and each is entitled to receive from the society necessary maintenance, support and education, and in return each is bound to render to the society labor and obedience. The agreement of 1827 contained a provision, that if any member withdrew from the society there should be refunded to him the value, without interest, of all the property he had brought into the community. The agreement of 1836, however, rescinded that provision wholly, and stipulated that if any individual shall withdraw from the society or depart this life, neither he in the one case nor his representatives in the other shall be entitled to demand an account of his contributions, whether in lands, goods, money or labor, or to claim anything from the society as matter of right; but that it shall be left altogether to the discretion of the superintendent to decide whether any, and if any, what allowance shall be made to such member or his representatives as a donation.

In view of the decision of the Supreme Court of Pennsylvania in *Schriber vs. Rapp*, 5 Watts, 351, and the decisions of the Supreme Court of the United States in *Goesele et al. vs. Bimeler et al.*, 14 How., 589, and *Baker et al. vs. Nachtrieb*, 19 How., 126, it is clear that the above recited articles of agreement are valid contracts, and that thereunder, upon the death of a member of the society in fellowship, no claim enforcible against the society or its property passes to his heirs or personal representatives, and that since 1836 no member voluntarily withdrawing from the society could acquire any such claim.

Now, not one of the plaintiffs was ever a member of the Harmony Society. Furthermore, it does not appear that any of the persons through whom the plaintiffs claim, contributed any money or property to the Society. The master has found that no such contribution was ever made by any of those persons. The correctness of that finding has not been impeached. All the members through whom the plaintiffs claim who left the society, withdrew in or before the year 1827. Presumably they retired upon terms satisfactory to themselves. If, however, those persons so withdrawing had any legal demands against the society, those demands have been barred by lapse of time. *Speidel vs. Henrici*, 120 U. S., 377. The other persons through whom the plaintiffs claim remained with the society and died in fellowship. They thus received and enjoyed all the benefits secured to them

by the recited articles of agreement, and therefore, no rights enforcible against the society passed from them to their heirs or personal representatives.

The soundness of the view that the deceased ancestors and the collateral relatives of the plaintiffs could transmit to them no rights enforcible against the Harmony Society as a living organization is impliedly conceded by the bill, for it alleges that the society has come to an end. The bill proceeds upon the theory that a dissolution of the society has been brought about. Upon this assumption, and under the allegation "that recently said Harmony Society has become dissolved as aforesaid;" the bill prays that the Court take charge of the assets of the society and distribute the same amongst the parties legally and equitably entitled thereto.

But the hypothesis of dissolution is not well founded. The proofs show that the society is in full life. There has been no dissolution of the society either by the common consent of the members or by their acts. The membership, indeed, has become greatly reduced, but the rights of the society as now constituted are as sacred in the eye of the law as they were when the membership was twentyfold greater. The society as an organization exists in law and in fact. Under the evidence the findings of the master upon this branch of the case undoubtedly are right. Hence the very foundation of the bill fails. The plaintiffs do not show that they are entitled to any equitable relief whatever.

It is not necessary, nor would it be proper, for the Court to express any opinion as to what would be the legal status and the ultimate disposition of the property of the Harmony Society were its existence terminated by the death of all its members, or were a dissolution of the society otherwise effected. No such questions are before us. We are not dealing with the assets of a defunct or dissolved association.

In respect to the alleged conspiracy to wreck and dismember the Harmony Society, we feel called upon to say that we fully agree with the conclusion of the master. The acts here principally complained of were, we think, designed not to destroy the society, but to save it from the consequences of business mistakes made by none of the present officers or members of the society and for which none of them are at all responsible. The measures resorted to in the emergency which was upon the society were successful in extricating it from great financial peril. Those measures were adopted and carried out under the advice of eminent counsel, whose rectitude of purpose the Court cannot doubt.

And now before closing we deem it to be our duty to declare that after the most careful scrutiny of the evidence it is our judgment that the charges of immorality made against John S. Duss, the Senior Trustee, in the twenty-fourth paragraph of the bill, are not sustained by the evidence, but are disproved.

The general rule in equity that costs follow the decree, we think, should be applied here under the circumstances. *Stoetzel vs. Penn Bank*, 147 Pa. 140, 154. The bill alleges conspiracy, fraud and immorality, and these grave charges have not been withdrawn. Having successfully vindicated themselves from these charges the defendants are justly entitled to full costs.

DECREE.

This cause came on to be heard at this term of the Court upon the pleadings and evidence, and the report of the master and exceptions thereto, and was argued by counsel. And now this thirteenth day of February, 1899, upon consideration, it is ordered, adjudged and decreed that the plaintiffs' bill be and the same is hereby dismissed; and it is further ordered, adjudged and decreed that the plaintiffs pay the costs, including the master's fee to be fixed *sec. reg.*, and which, together with his compensation as examiner, shall be paid to the master in the first instance by the defendants.

BY THE COURT.

PETITION FOR APPEAL AND ASSIGNMENTS OF ERROR.

To the Honorable, the Judges of the said Court:

The petition of Antony Koterba, David Strohaker and Allen Shale, on behalf of themselves and of the other plaintiffs in the said case, respectively shows:

That they consider themselves aggrieved by the decree of the Circuit Court of the United States for the Western District of Pennsylvania entered in the above cause on the 13th day of February, 1899, and it hereby appeals to the Circut Court of Appeals for the United States for the Third Circuit from the said decree and assign for error the following:

First. The Court erred in not entering a decree in favor of the plaintiffs and in entering a decree in favor of the defendants.

Second. The Court further erred in charging the plaintiffs with the costs of the said bill.

Third. The Court erred in entering the following decree:

"DECREE."

"This cause came on to be heard at this term of Court upon the pleadings and evidence and the report of the master and exceptions thereto and was argued by counsel;

"And now, this thirteenth day of February, 1899, upon consideration it is ordered, adjudged and decreed that the plaintiffs' bill be and the same is hereby dismissed; and it is further ordered, adjudged and decreed that the plaintiffs pay the costs, including the master's fees to be fixed *sec. reg.*, and which, together with his compensation as examiner, shall be paid to the master in the first instance by the defendants.

BY THE COURT.

Fourth. The Court erred in its opinion in stating: "The constitution of the Harmony Society is embodied and the general purposes of the association are set forth in a series of written agreements," and including therein the agreement of 1890 (see Exhibit "F," Record p. 67).

Fifth. The Court further erred in holding in its opinion filed that the "recited articles of agreement are valid contracts."

Sixth. The Court below further erred in its opinion as follows:

> "Furthermore, it does not appear that any of the persons through whom the plaintiffs claim contributed any money or property to the society. The master has found that no such contribution was ever made by any of those persons. The correctness of that finding has not been impeached."

Seventh. The Court below further erred in asserting as follows:

> "The other persons through whom the plaintiffs claim remained with the society and died in fellowship; thus they received and enjoyed all the benefits secured to them by the recited articles of agreement; and therefore no rights enforceable against the society passed from them to their heirs or personal representatives."

Eighth. The Court below further erred in its opinion in asserting as follows:

> "But the hypothesis of dissolution is not well founded. The proofs show that the society is in full life; there has been no dissolution of the society either by the common consent of the members or by their acts. The membership indeed has become greatly reduced; but the rights of the society as now constituted are as sacred in the

eye of the law as they were when the membership was twenty-fold greater. The society as an organization exists in law and in fact. Under the evidence the findings of the master on this branch of the case undoubtedly are right; hence the very foundation of the bill fails. The plaintiffs do not show that they are entitled to any equitable relief whatever."

Ninth. The Court below further erred in its opinion in holding as follows in respect to the alleged conspiracy to wreck and dismember the Harmony Society:

"We feel called upon to say that we fully agree with the conclusion of the master. The acts here principally complained of were, we think, designed not to destroy the society but to save it from the consequences of business mistakes made by none of the present officers or members of the society, and for which none of them are at all responsible. The measures resorted to in the emergency which was upon the society were successful in extricating it from great financial peril."

Tenth. The Court below further erred in sustaining the report of the master in overruling the exceptions filed thereto by the plaintiffs, as follows:

"Third. To so much of his report as finds that the plaintiffs have no interest whatever in the property of the society, and are not entitled to any part or share upon a dissolution."

Eleventh. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Fourth. To so much of the master's report as holds that the agreements of 1805 and 1827 are substantially the same: and that a new plan of government by the agreement of 1847 was made necessary by the death of Rapp."

Twelfth. The Court below further erred in overruling the following exceptions of the plaintiffs to the report of the master:

"Fifth. The master erred in not finding that the agreement of 1847 destroyed the communism of the property and the patriarchial form of government provided in the agreements of 1805 and 1827, and substituted therefor a capitalistic system assimilated to the forms usually adopted for the management of capital and its employment for profit under the direction of a directory and presiding officers."

Thirteenth. The Court below further erred in not sustaining the following exceptions of plaintiffs to the report of the master:

> "Sixth. The master erred in not finding that by the agreement of 1847 all who were then members of the society and who afterwards became members of the society became owners in and to an equal undivided share of all the property of the said society, real and personal, which by the agreement of 1847 was converted into a joint and indivisible fund and that, therefore, upon the event of the dissolution of the association from any cause whatever in the absence of provisions in that agreement for the distribution of said fund, the joint and indivisible fund is to be distributed among all persons dying in the society and the legal heirs and representatives of those who died in the society."

Fourteenth. The Court below further erred in overruling the following exception of plaintiffs to the master's report:

> "Seventh. The master erred in not finding that there was no joint tenancy with right of survivorship or tontine system provided for by any of the agreements referred to in the testimony; and in not finding also as a special fact that none of the agreements made any provision for a winding up of the affairs of the society or for a distribution of its proceeds in the event of a dissolution of the said society."

Fifteenth. The Court below further erred in overruling the following exception of plaintiffs to the report of the master:

> "Ninth. The master erred in finding that the plaintiffs under the agreements hereinbefore referred to have no claim on the property of the society through any of their ancestors."

Sixteenth. The Court below further erred in overruling the following exception of the plaintiffs to the report of the master:

> "Tenth. The master erred in holding that any inconsistency exists in the allegations of the 6th and 26th paragraphs of the plaintiffs' bill, and says that the proper construction of the said 26th paragraph is that the trust is 'contrary to public policy and void in law or equity.'"

Seventeenth. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

> "Eleventh. The master erred in holding that the associates of George Rapp, in the original agreement of 1805, were named and ascertained by the deed of the

6th of May, 1815; and holding that the plaintiffs' objection as to perpetuities are unfounded."

Eighteenth. The Court below further erred in overruling the following exception of the plaintiffs to the master's report.

"Twelfth. The master erred in holding that the society as an incorporated association had a right to take personal property."

Nineteenth. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Thirteenth. The master erred in holding that the plaintiffs are barred by time assuming the legal inability of this society as an unincorporated association to take personal property."

Twentieth. The Court below further erred in overruling the following exception of the plaintiffs to the master's report.

"Fourteenth. The master erred in assuming that there was no evidence of a conveyance to George Rapp or Frederick Rapp of the funds of the old society but that they were purchased from outside persons; and also in his conclusion that if the trust was void that the plaintiffs are not entitled to it but that the same would revert to the grantors or go to the grantee clear of the trust."

Twenty-first. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Fifteenth. The master erred in finding that the various agreements did not create a limited or base fee; and also erred in not holding that the said agreements did create a limited or base fee."

Twenty-second. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Sixteenth. The master erred in finding that no resulting trust existed."

Twenty-third. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Seventeenth. The master erred in finding a sufficient and valuable consideration by the association to the members thereof for their interest in the property of the said association because the said agreements disclosed a tenancy in common in the property of an unincorporated association incapable of giving or receiving considerations as between the several tenants in common."

Twenty-fourth. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

> "Eighteenth. The master erred in not holding that the scheme of the said association as disclosed by its various agreements and its prevailing customs and methods is against public policy, and therefore should be wound up, and the several reliefs prayed for in said bill should be granted."

Twenty-fifth. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

> "Nineteenth. The master erred in finding that the Harmony Society has not been dissolved by the common consent of its members."

Twenty-sixth. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

> "Twentieth. The master erred in finding that the Harmony Society had not been dissolved by the abandonment of the purposes for which it was founded."

Twenty-seventh. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

> "Twenty-first. The master erred in finding that the abandonment of the purposes of the society to cause a dissolution must be an abandonment by all of its members."

Twenty-eighth. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

> "Twenty-second. The master erred in finding that there was no conspiracy on the part of J. S. Duss to admit Dr. Cyrus Teed and the members of his Koreshan Society to membership in the Harmony Society, and to turn over to them all the property of the Harmony Society as alleged in the 10th, 11th and 12th paragraphs of the bill."

Twenty-ninth. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

> "Twenty-third. The master erred in finding that Duss was regularly and duly elected a member of the Harmony Society according to the constitution and by-laws thereof."

Thirtieth. The Court below further erred in overruling the following exception of the plaintiffs to the masters' report:

> "Twenty-fourth. The master erred in finding that the remaining members of the Board of Elders after the death

of Kirschbaum, Wirth and Lenz were not under the dominion and control of Duss."

Thirty-first. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Twenty-fifth. The master erred in finding the election of Duss, Nicklaus and Fischern to the Board of Directors was regular and valid."

Thirty-second. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Twenty-ninth. The master erred in finding that Duss did not prevent the admission of new members, as alleged in the fourteenth paragraph of the bill, and in not finding that the said Duss and his associates designedly permitted the membership of the society to run down and diminish in order to vest the property of the society and the control thereof in himself and a few others under his control and dominion."

Thirty-third. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Thirtieth. The master erred in finding that the use of the funds of the society to the amount of over a million dollars was an authorized and proper application of said fund, and in finding that the same was not the result of a conspiracy between Duss, Hice and Reeves, as alleged by the 15th paragraph of the bill."

Thirty-fourth. The Court below further erred in overruling the following exception of the plaintiffs to the Master's report:

"Thirty-first. The master erred in failing to find, as alleged in the 16th paragraph of the bill, that Duss and his confederates conspired to defraud plaintiffs and other members by executing the mortgage to Harry Darlington, trustee, of $400,000 upon the lands of the society."

Thirty-fifth. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Thirty-second. The master erred in finding that Henrici had full knowledge and comprehension of the terms of said mortgage, and consented knowingly thereto, and that said consent and execution of the mortgage aforesaid was not made by Henrici when in *articulo mortis*, as alleged in the 16th paragraph."

Thirty-sixth. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Thirty-fourth. The master erred in finding that the mortgage for $100,000 of May 1st, 1893, was within

the powers conferred upon the trustees, and was authorized by the agreement or instrument of December 20th, 1882, Exhibit No. 491."

Thirty-seventh. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Thirty-fifth. The master erred in not finding that the money represented by the foregoing mortgage was not raised for the purpose of raising money to induce members to retire, and that said money was so used; and in finding that the same was not borrowed for the purpose aforesaid."

Thirty-eighth. The Court below further erred in overuling the following exception of the plaintiffs to the master's report:

"Thirty-sixth. The master erred in finding that Duss did not, as charged in the 19th paragraph of the bill, by artifice, misrepresentation, coercion and fraud induce or force all the active and more intelligent members of the society to withdraw, and that he did not secretly and fraudulently appropriate several hundred thousand dollars of the moneys of the society and use it in getting rid of these members."

Thirty-ninth. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Thirty-seventh. The master erred in finding that the payments to the retiring members were not made secretly, and that the same were within the power of the trustees."

Fortieth. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Thirty-eighth. The master erred in finding that Duss protested against the withdrawal of the retiring members, and that the withdrawal of these members was not caused by any scheme or action of Duss, but by the filing of the Feucht bill against the society, and the actions of the plaintiffs in that bill prior to and after it was filed."

Forty-first. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Thirty-ninth. The master erred in not finding that the withdrawal of retiring members was caused by the offers of money made by Duss and by threats and coercions used by him."

Forty-second. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Fortieth. The master erred in finding that the averments of the 19th paragraph of the bill in regard to the

election of women to the Board of Elders, and the purposes for which the same was done are not sustained."

Forty-third. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Forty-first. The master erred in sustaining the allegations contained in the 20th paragraph of the bill in relation to the conveyance to the Union Land Company."

Forty-four. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Forty-second. The master erred in finding that the conveyance to the Union Land Company did not work a dissolution of the society, and that the same did not wholly terminate the existence of said society, not only as to the government thereof by the Board of Elders and by the members, but also as to the ownership of any property."

Forty-fifth. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Forty-third. The master erred in finding that said conveyance was within the powers and the authority of the trustees or the terms of the trust upon which they held the same."

Forty-sixth. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Forty-sixth. The master erred in finding that the principle of equality and community of goods had not been abandoned, as charged in the 23rd paragraph of the bill."

Forty-seventh. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Forty-ninth. The master erred in finding that the doctrine and practice of celibacy had never been one of the essential principles or doctrines of the society."

Forty-eighth. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Fiftieth. The master erred in treating the various acts alleged by the plaintiff as constituting dissolution of the society separately, and in not considering and passing upon the united effect of all said acts and matters, and in failing to find that the same, when taken collectively, would constitute a dissolution of the society or an abandonment of the purposes of the society."

Appellants therefore pray that the said decree of the Court below may be reversed and set aside, and that a decree of the said

Circuit Court of Appeals may be entered in favor of these appellants as prayed for in the bill.

SHIRAS & DICKEY,
Counsel for Appellants.
S. SCHOYER, JR.,
for Appellants.

And now, August 9, 1899, the within petition for appeal presented by Shiras & Dickey and S. Schoyer, Jr., the appeal prayed for is allowed and bond in $1,000 to be given with surety to be affirmed by this Court.

M. W. ACHESON,
Circuit Court.
SHIRAS & DICKEY,
S. SCHOYER, JR.

BOND.

Know all men by these presents, that we, Antony Koterba, David Strohaker and Allen Shale, of the County of Columbiana, State of Ohio; B. C. Henning and G. W. Donaghy, of the County of Allegheny, State of Pennsylvania, are held and firmly bound unto John S. Duss, Gottlieb Riethmueller, Franz Gillman, Conrad Hermansdoerfer, Edward Kellerman, Johanna Hermansdoerfer, Susie C. Duss, Karolina Molt, Katrina Nagel, Elizabeth Beck, Maria Diem, Barbara Boesch, Fredericka Muntz, Dorothea Hoehr, Regina Lautenschlager, and Christina Rall, Henry Hice, John Reeves and The Union Company, defendants in the above entitled cause, in the sum of one thousand dollars, to be paid to the said obligees, their certain attorneys or assigns.

To which payment well and truly to be made we, and every one of us, do bind ourselves, our heirs, executors and administrators, firmly by these presents.

Sealed with our seals. Dated the 9th day of August, A. D. one thousand eight hundred and ninety-nine.

WHEREAS, the above named Antony Koterba, David Strohaker and Allen Shale have prosecuted an appeal to the United States Circuit Court of Appeals for the Third Circuit to reverse the decree rendered in the above entitled suit, by the Circuit Court of the United States for the Western District of Pennsylvania.

Now, the condition of this obligation is such that if the above named, Antony Koterba, David Strohaker and Allen Shale, shall prosecute said appeal to effect and answer all costs of said appeal;

if he fail to make the same good, then this obligation shall be void; otherwise to be and remain in full force and virtue.

Sealed and delivered in the presence of

DAVID STROHAKER, [SEAL]
ALLEN SHALE, [SEAL]
ANTONY KOTERBA, [SEAL]
B. C. HENNING, [SEAL]
G. W. DONAGHY. [SEAL]

Witness:

HARVEY FELGER,
GEORGE GOLDNER,
GEO. H. CALVERT,
as to Henning & Donaghy.

STATE OF PENNSYLVANIA, }
COUNTY OF ALLEGHENY, } *ss.*

Personally before me came B. C. Henning and G. W. Donaghy, the above named surities, who, being duly sworn, do depose and say that they are each worth the amount of the penalty of said bond, over and above their debts and liabilities and exemptions.

B. C. HENNING,
G. W. DONAGHY.

Sworn and subscribed the 9th day of August, A. D. 1899.

GEORGE H. CALVERT,
[SEAL] *Notary Public.*

And now, August 9th, 1899, the within bond approved.

M. W. ACHESON,
Circuit Judge.

CITATION.

UNITED STATES OF AMERICA, }
WESTERN DISTRICT OF PENNSYLVANIA, } *ss.*

To John S. Duss, Franz Gillman, Johanna Hermansdoerfer, Susie C. Duss, Karoline Molt, Katrina Nagel, Barbara Boesch, Fredericka Muntz, Christina Rall, Henry Hice and John Reeves, and The Union Company.

GREETING:—You and each of you are hereby cited and admonished to be and appear at a session of the United States Circuit

Court of Appeals, for the Third Circuit, to be holden at Philadelphia, in said Circuit, on the 8th day of September, 1899, persuant to an appeal filed in the Clerk's Office of the Circuit Court of the United States for the Western District of Pennsylvania, wherein Christian Schwartz, Antony Koterba, David Strohaker, Allen Shale and G. L. Shale are appellants, and you are the appellees, to show cause, if any there be, why the decree rendered against the said appellants, as in the said appeal mentioned, should not be corrected and speedy justice done to the parties in that behalf.

Witness my hand this 9th day of August, A. D. 1899.

M. W. ACHESON,
Circuit Judge.

Service of above citation accepted this August 11th, 1899.

C. S. FETTERMAN,
Of Attorneys for Appellees.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

THIRD CIRCUIT.

July 10th, 1900.

CHRISTIAN SCHWARTZ *et al.*,
Appellants.
vs.
JOHN S. DUSS *et al.*,

Appeal from the Circuit Court of the United States for the Western District of Pennsylvania.

OPINION OF THE COURT.

GRAY, J.

This is an appeal from the decree of the Circuit Court for the Western District of Pennsylvania. The plaintiffs below, appellants here, seek in this suit to recover a portion of the property of the Harmony Society, which they allege is defunct, and claim that its property ought to be distributed among those entitled thereto.

In the year 1803 George Rapp and his son John and several of their friends left the Kingdom of Wurtemburg, came to the United States, and located at a place called Harmony, in Butler County, Pennsylvania, where they were joined by a considerable

number of other emigrants. They remained there until the year 1814, when they removed to Posey County, Indiana, where they remained until the year 1825, when, becoming dissatisfied, they moved back to Pennsylvania, and located at Economy in Beaver County, Pennsylvania, where they have ever since resided.

They formed a society or an association called "The Harmony Society," and in 1805 they made the first written contract between them.

That the said society was organized upon the principle of community of goods and land ownership. The members of the said society who had brought with them from Wurtemburg, money, combined their funds and held all their property in common, they lived as members of a common household, and each member enjoying alike with every other, the fruits of their common labor in equality and brotherhood. The occupation or business of the said society was agriculture, except in so far as it was necessary to manufacture shoes, clothing and other necessaries for the community. The members of the said society obeyed George Rapp as their spiritual and temporal leader and ruler.

The only laws and rules governing the said society were made by him, the members thereof having no voice in their enactment.

About the year 1807 the community promulgated the doctrine of celibacy as being necessary for the success of a communistic society.

The agreement of 1805, Exhibit "A," p. 47, Vol. 1 Record, is as follows:

"Be it hereby known to all who need to know that the following agreement has this day been made and concluded between us, the subscribers of the one part and George Rapp and his associates of the other part:

"ARTICLE 1. We the subscribers on our part and on the part of our heirs and descendants deliver up, renounce and remit all our estate and property consisting of cash, land and chattels, or whatever it may be, to George Rapp and his associates in Harmony, Butler County, Pennsylvania, as a free gift or donation for the benefit and use of the community there, and bind ourselves on our part as well as on the part of our heirs and descendants to make free renunciation thereof, and to leave the same at the disposal of the superintendents of the community, as if we had never had or possessed it.

"ARTICLE 2. We pledge ourselves jointly and severally to submit to the laws and regulations of the community, and to show due and ready obedience toward those who are appointed and

chosen by the community as superintendents in such manner that not only we ourselves endeavor by the labor of our hands, to promote the good and interest of the community, but also to hold our children and families to do the same.

"ARTICLE 3. If, contrary to our expectation, the case should happen, and we jointly or severally could not stand to it in the community, and we would within a few or more years break our promises and withdraw from the community, for whatever cause it may be, never to demand any reward, either for ourselves or children, or those belonging to us for any of our labors or services rendered, but whatever we jointly and severally shall or may do, we will have all done as a voluntary service for our brethren.

"In consideration whereof George Rapp and his associates adopt the subscribers jointly and severally as members of the community, whereby each of them obtains the privilege to be present at each religious meeting; not only they themselves but also their children and families, shall and will receive the same necessary instructions in church and school which is needful and requisite for their temporal good and welfare as well as eternal felicity.

"ARTICLE 4. George Rapp and his associates promise to supply the subscribers jointly and severally with all the necessaries of life, as lodging, meat, drink and clothing, etc., and not only during their healthful days, but also when one or more of them become sick or otherwise unfit for labor, they shall have and enjoy the same support and maintenance as before; and if, after a short or long period the father or mother of a family should die, or be otherwise departed from the community, and leave a family behind, they shall not be left widows or orphans, but partakers of the same rights and maintenance as long as they live or remain in the community, as well in sick as healthful days, the same as before, or as circumstances or necessity may require.

"ARTICLE 5. And if the case should happen as above stated that one or more of the subscribers after a short or long period should break their promise and could or would not submit to the laws and regulations of the church or community, and for that or any other cause would leave Harmony, George Rapp and his associates promise to refund him or them the value of his or their property brought in without interest, in one, two, or three annual installments, as the sum may be, large or small; and if one or more of them were poor and brought nothing into the community, they shall, provided they depart openly and orderly, receive a donation of money, according to his or their conduct while a

member, or as he or their circumstances and necessities may require, which George Rapp and his associates shall determine at his or their departure.

"In confirmation whereof both parties have signed their names.

"Done in Harmony, February 15th, 1805."

They became the owners of about seven thousand acres of land at Harmony, Butler County, which on May 6th, 1815 was conveyed by Frederick Rapp, as their attorney in fact to Abraham Zeigler for the consideration of $100,000.

And in that year or in 1814 the society removed from Butler County, Pennsylvania, to Posey County, State of Indiana, where in 1821 a second agreement with each other in German was entered into by them.

In 1825 the society removed from Indiana to Beaver County, Pennsylvania, where they purchased and settled upon a tract of land containing about 3,000 acres, now known as "Economy," where they have since remained, and which has since become very valuable, and on which they have erected many buildings including dwellings and factories of various kinds, and made many valuable improvements.

After the settlement at Economy in 1827, another agreement was entered into and signed by all of the then members of the association.

This agreement is substantially the same as the agreement of 1805, in so far as it relates to the rights and duties of the members of the society. It had, however, in it a stipulation constituting the sixth article, that the society would refund to any member who, for any reason should withdraw therefrom, "the value of all such property as he or they may have brought into the community, in compliance with the first article of this agreement." And if the persons withdrawing were poor and brought nothing into the community, they should, nevertheless, receive a donation of money according to the length of their stay, and to their conduct and necessities in the judgment of the superintendent of the association. In 1836, owing to troubles occasioned by a secession of members, it was deemed wise to abrogate this article, and accordingly an agreement supplementary to that of 1827 was entered into by all of the then members of the community in which "the principal of restoration of property" was, for reasons stated, renounced, and the said sixth article of the agreement of 1827 was expressly and entirely "annulled and made void as if it had never existed" all other articles remaining "in

full force as heretofore." This supplementary agreement then provided as follows: "2nd. All the property of the society, real, personal and mixed, in law or equity and howsoever contributed or acquired shall be deemed, now and forever joint and indivisible stock."

Each individual is to be considered to have finally and irrevocably parted with all his former contributions, whether in land, goods, money or labor; and the same rule shall apply to all future contributions whatever they may be. "3rd. Should any individual withdraw from the society, or depart this life, neither he in the one case nor his representatives in the other shall be entitled to demand on account of said contributions, whether in land, goods, money or labor, or to claim anything from the society as a matter of right. But it shall be left altogether to the discretion of the superintendent, to decide whether any, and if any, what allowance shall be made to such member, or his representatives as a donation."

After the death of George Rapp in 1847, and in that year, another agreement was entered into by them, the then members of the society, confirming the agreements of 1827 and 1836, except so far as the same were affected by the death of the said George Rapp, and providing for a different scheme of administration. the executive powers which had heretofore been mainly exercised by the said Rapp, were vested in a board of nine elders, to be chosen as therein provided.

The agreements of 1827, 1836 and 1847 are those under which, or some of which, the plaintiffs claim the right to share in the property and assets of the society, as heirs of former members. The bill alleges that the complainants were heirs and next of kin of those who either were members of the society and withdrew from the same before the execution of the agreement of 1836, or of those dying in the society before that time, or of those who died members of the society after having joined in the agreements of 1834 and 1847.

The bill alleges that the defendant, John Duss, with others entered into a conspiracy, on more than one occasion, to wreck the society and take to himself and his co-conspirators the property and assets of the same. The bill further alleges that there has been prior to and up to the time of filing of the bill, such an abandonment by the defendants, constituting the present membership of the society, of the principles and purposes upon which and for which the said society was founded, as to work a dissolution of the same. The complainants therefore contend that, such being

the case, the present property of said society reverts to the complainants and such others as were heirs at law and next of kin of those who contributed and gave to the said society its property.

To support the charge of the abandonment of purposes of the society, various specific allegations are made concerning the alleged immorality of John Duss and others of the defendants, of the intemperance alleged to prevail among them, and the alleged renunciation of the religious principles generally, upon which the society was founded.

In view of the findings of the master, hereinafter referred to, it is unnecessary to consider these allegations in detail.

After the cause was at issue, upon agreement and request of the parties, the Court below appointed W. W. Thompson, Esquire, as examiner and master, with authority to hear and take all the testimony, and find all the issues of fact and law, and to report the testimony and such findings to the Court. In pursuance of this appointment, a great amount of testimony was adduced by the parties and taken by the examiner, who returned the same to the Court below, together with a long and most elaborate report, embodying his findings, as master, of the facts and conclusions of law arising thereon.

To these findings of the master, exceptions were duly taken and filed, and argued before the Court below. That Court, after hearing the case upon pleadings and evidence, the master's report and the exceptions thereto, made a decree dismissing the complainant's bill. From this decree an appeal has been taken to this Court and numerous exceptions have been filed.

But it is only necessary to consider the underlying questions. These are succinctly and correctly stated by the master, in his report, as follows:

"1st. Have the plaintiffs or any of them, such proprietary right or interest in the property or assets of the Harmony Society as entitled them, upon the dissolution of the society, to any part of, or share in, such property or assets, or as entitled them to the account prayed for in the bill?

"2nd. Has the Harmony Society been dissolved by the common consent of the members or by an abandonment of the purposes for which it was formed?"

These obviously fundamental and determining questions have been most ably discussed by the master in the light of the testimony and documentary evidence, all of which, together with the master's report, are contained in the record before this Court.

The findings of fact by the master bearing on the first of these questions were as follows:

"First. That none of the plaintiffs were ever members of the society.

"Second. That all of those members of the society through whom Christian Schwartz claims as their heir, signed the agreements of 1836 and 1847, and continued members until their death.

"Third. That Antony Koterba claims as heir of his father, Joseph Koterba, and his half-brother Andreas Koterba, and that Joseph Koterba joined in the organization of the society, and also signed the agreement of 1827, and afterwards, in 1827, withdrew from the society, and that Andreas Koterba signed the agreements of 1827, 1836 and 1847, and died a member of the society.

"Fourth. That the grandparents of David Strohaker, viz., Christian Strohaker and wife, and Matthias Rief and wife, joined the society in 1805 and all remained members until their death—all dying between 1820 and 1825, except Mrs. Reif who died between 1830 and 1836. That his father, Christian Strohaker, signed the agreements of 1827, and withdrew from the society in 1827. That his aunt (Christiana) Catharine Strohaker, signed the agreements of 1827, 1836 and 1847, and continued a member of the society until her death.

"Fifth. That Lawrence Scheel and Jacob Scheel, ancestors of Allen and G. L. Scheel or Shale, joined the society in 1805; that Lawrence withdrew in 1824 or 1826; that Jacob Scheel signed the agreement of 1827, and died a member about 1837.

"Sixth. That none of the parties, through whom the plaintiffs claim, contributed any money to the society."

As a conclusion of law upon the facts thus found, the master reports: "The plaintiffs, therefore, under their agreements have no claims on the property of the society through any of their ancestors. Not through those who withdrew before the execution of the agreement of October 31st, 1836, because those who withdrew had had returned to them the value of any property they might have contributed, and had received compensation for their interest or part in the society or its property. Not through those who died in the society before 1836, because all their interest in the property had become vested in the society and did not descend to their heirs. And not through those who died in or withdrew from, the society after the agreement of 1836, because they had by that agreement expressly renounced for themselves and their heirs all right to claim anything on their withdrawal or death.

In all the cases cited above the principle of survivorship in the

remaining or surviving members was recognized as existing, and approved and enforced."

As a mixed finding of fact and law, the master, for reasons set out at great length in his report, answers the second question above stated, as follows: "That there has been no abandonment of the purposes for which the Harmony Society was founded, and that the said society has not been dissolved by reason of any such abandonment, and that the plaintiffs are not entitled to the relief prayed for in the bill."

The report ends with a recommendation by the master, that the bill of complainants be dismissed with costs.

Where the Court with the consent and by the agreement of parties, appoints a master, and confers upon him "authority to hear and take all testimony, and find all the issues of law and fact" as in this case, in so far as the report of the master, and the opinion of the Court find facts, such findings are considered as conclusive in this Court, unless plain error be unmistakably shown, from the great preponderance of evidence in the case.

Met. Bank vs. Rodgers, 53 Fed. Report 776.
Kimberly vs. Arms, 129 U. S. 525.
Dravo vs. Fahill, 132 U. S. 487.

The findings of facts made by the master were confirmed by the Court below. The learned Judge of that Court, in his opinion, states that he read all the testimony in the case, in order to come to an independent conclusion, and that the conclusion so arrived at agreed entirely with that reported by the master. Such finding by the master and the Court, unless found by this Court to be unmistakably and plainly erroneous, will be binding here, and will determine this case adversely to the complainants, and make unnecessary any examination of the questions of law that might have been involved upon different findings of fact.

A careful examination of the testimony and evidence contained in the record before us, not only fails to make manifest any such plain and unmistakable error in these findings, but convinces this Court that they were in all respects justified. The learned Judge of the Court below has so completely covered the questions of law and fact arising in this case and necessary to its determination, that we feel constrained to adopt as our own, his opinion, as we find the same in the record, part of which we here repeat as follows:

"The plaintiffs sue as heirs of certain persons who were formerly members of the Harmony Society and who continued to be members until their voluntary withdrawal or death. The bill is against all persons who composed the society at the time of the

commencement of the suit, namely, June 27th, 1894, and the membership then embracing sixteen persons."

The bill joins as co-defendants with the members of the Harmony Society, Henry Hice, John Reeves and the Union Company, a corporation, the bill charging that these three defendants and the defendant John S. Duss, a member of the society, and the Senior Trustee thereof,—were acting together in a conspiracy to wreck and dismember the society and appropriate to themselves the entire assets of the society. The bill further alleges that the purposes for which the society was founded and its established practices had been abandoned, and that by common consent the society had ceased to exist as an association and had been dissolved, and that "the assets of such dissolved association have reverted to the donors thereof, among whom were the ancestors and intestates of the plaintiffs." The bill prays for the appointment of a receiver, and for the division and distribution of the assets of the society amongst the persons legally entitled thereto, including the plaintiffs.

All the defendants have answered the bill. In their answers they all deny the above recited charges and allegations and all the averments in the bill upon which the plaintiffs supposed right t relief rests; and they also deny that the plaintiffs have any interest whatever in the property of the Harmony Society or any right to intermeddle with its affairs." * * * In conformity with the agreement of the parties and pursuant to the order appointing him, the master took a large amount of testimony and made findings which are embodied in a written report to the Court.

The master filed with his report the testimony and exceptions taken by the plaintiffs to his findings.

"The cause has been heard upon the pleadings and evidence, the master's report, and the exceptions thereto. The report of the master is altogether adverse to the plaintiffs. He finds that the charges of conspiracy and misconduct and the allegations of the abandonment of the purposes and established practices of the Harmony Society and of the dissolution of the society, contained in the bill, are not sustained by the evidence, and that they are not true. Upon every material question of fact, the findings of the master is distinctly in favor of the defendants, and he recommends the dismissal of the bill.

"The master's report covers the entire case and evinces the most careful consideration of every question here raised. Nevertheless the Court felt it to be its duty to make an independent investigation of the facts and merits of the case; and therefore we have attentively read and considered the whole of the evidence.

"Avoiding as needless, a particular discussion of the numerous exceptions to the master's report, we will briefly state our general views and conclusions."

The constitution of the Harmony Society is embodied and the general purposes of the association are set forth in a series of written agreements executed in the years 1805, 1821, 1827, 1836, 1847 and 1890. These agreements were signed at their respective dates by all the then members of the society. By the agreement of 1805, the doctrine of community of property became, and by subsequent agreements continues to be a fundamental principle of the society. Its acceptance is an essential condition of membership. By the constitution of the society, individual ownership of property is renounced in favor of the community or society. The members have all things in common, and each is entitled to receive from the society necessary maintenance, support and education, and in return, each is bound to render to the society labor and obedience. The agreement of 1827 contained a provision that if any member withdrew from the society there should be refunded to him the value, without interest, of all the property he had brought into the community. The agreement of 1836, however, rescinded that provision wholly and stipulated that if any individual shall withdraw from the society, or depart this life, neither he in the one case, nor his representatives in the other shall be entitled to demand an account of his contributions, whether in lands, goods, money or labor, or to claim anything from the society as a matter of right; but that it shall be left altogether to the discretion of the superintendent to decide whether any, and if any, what allowance shall be made to such member, or his representatives, as a donation."

"In view of the decision of the Supreme Court of Pennsylvania, in Schriber vs. Rapp, 5 Watts 351 and the decisions of the Supreme Court of the United States in Goesele et al. vs. Bimeler et al., 14 How. 589, and Baker et al. vs. Nachtrieb, 19 How. 126, it is clear that the above recited articles of agreement are valid contracts, and that thereunder, upon the death of a member of the society in fellowship, no claim enforceable against the society or its property passes to his heirs or personal representatives, and that since 1836 no member voluntarily withdrawing from the society could acquire any such claim.

"Now, not one of the plaintiffs was ever a member of the Harmony Society. Furthermore, it does not appear that any of the persons through whom the plaintiffs claim contributed any money or property to the society. The master has found that no such

contribution was ever made by any of those persons. The correctness of that finding has not been impeached. All the members through whom the plaintiffs claim who left the society, withdrew in or before the year 1827. Presumably they retired upon terms satisfactory to themselves. If, however, those persons so withdrawing had any legal demands against the society, those demands have been barred by lapse of time. Spiedel vs. Henrici, 120 U. S. 377. The other persons through whom the plaintiffs claim remained with the society and died in fellowship.

"They thus received and enjoyed all the benefits secured to them by the recited articles of agreement, and therefore, no rights enforceable against the society passed from them to their heirs or personal representatives.

"The soundness of the view that deceased ancestors and the collateral relatives of the plaintiffs could transmit to them no rights enforceable against the Harmony Society as a living organization, is impliedly conceded in the bill, for it alleges that the society has come to an end. The bill proceeds upon the theory that a dissolution of the society had been brought about. Upon this assumption, and under the allegation "that recently said Harmony Society has become dissolved as aforesaid;" the bill prays that the Court take charge of the assets of the society, and distribute the same amongst the parties legally and equitably entitled thereto.

"But the hypothesis of dissolution is not well founded. The proofs show that the society is in full life. There has been no dissolution of the society either by the common consent of the members or by their acts. The membership, indeed has become greatly reduced, but the rights of the society, as now constituted, are as sacred in the eye of the law as they were when the membership was twenty-fold greater. The society as an organization exists in law and in fact. Under the evidence the findings of the master, upon this branch of the case, undoubtedly are right. Hence the very foundation of the bill fails. The plaintiffs do not show that they are entitled to any equitable relief whatever.

"It is not necessary, nor would it be proper, for the Court to express any opinion as to what would be the legal status and the ultimate disposition of the property of the Harmony Society, were its existence terminated by the death of all its members or were a dissolution of the society otherwise effected. No such questions are before us. We are not dealing with the assets of a defunct or dissolved association." "In respect to the alleged conspiracy to wreck and dismember the society, we feel called upon

to say that we fully agree with the conclusion of the master. The acts here principally complained of, we think, designed, not to destroy the society, but to save it from the consequences of business mistakes made by none of the present members or officers of the society, and for which none of them were at all responsible. The measures resorted to in the emergency which was upon the society were successful in extricating it from great financial peril. Those measures were adopted and carried out under advice of eminent counsel, whose rectitude of purpose the Court cannot doubt."

"And, now, before closing, we deem it to be our duty to declare, that after the most careful scrutiny of the evidence, it is our judgment that the charges of immorality made against John S. Duss, the Senior Trustee, in the twenty-fourth paragraph of the bill, are not sustained by the evidence, but are disproved."

"The general rule in equity that the costs follow the decree, we think, should be applied, here, under the circumstances. Swetzel vs. Penn Bank, 147 Pa. 140, 154. The bill alleges conspiracy, fraud, immorality, and these grave charges have not been withdrawn. Having successfully vindicated themselves from these charges, the defendants are justly entitled to full costs."

The decree of the Court below, dismissing the bill is AFFIRMED.

EXHIBIT "A."

Translation from the German Article executed at Harmony, Butler County, February 15th, 1805.

Be it hereby known to all who need to know it, that the following agreement has this day been made and concluded between us, the subscribers of the one part, and George Rapp and his associates of the other part:

ARTICLE 1. We the subscribers, on our part and on the part of our heirs and descendants, deliver up, renounce and remit all our estate and property consisting of cash, land and chattels, or whatever it may be, to George Rapp and his associates, in Harmony, Butler County, Pennsylvania, as a free gift or donation, for the benefit and use of the community there, and bind ourselves on our part, as well as on the part of our heirs and descendants, to make free renunciation thereof, and to leave the same at the disposal of the superintendents of the community as if we never had nor possessed it.

ARTICLE 2. We do pledge ourselves jointly and severally to submit to the laws and regulations of the community, and to show due and ready obedience toward those who are appointed and chosen by the community as superintendents in such a manner that not only we ourselves endeavor, by the labor of our hands, to promote the good and interest of the community, but also to hold our children and families to do the same.

ARTICLE 3. If, contrary to our expectation, the case should happen, and we jointly or severally could not stand to it in the community, and we would within a few or more years break our promises and withdraw from the community, for whatever cause it may be, never to demand any reward, either for ourselves or children or those belonging to us, for any of our labors or services rendered, but whatever we jointly and severally shall or may do, we will have all done as a voluntary service for our brethren.

In consideration whereof George Rapp and his associates adopt the subscribers jointly and severally as members of the community, whereby each of them obtains the privilege to be present at each religious meeting; not only they themselves but also their children and families, shall and will receive the same necessary instructions in church and school which is needful and requisite for their temporal good and welfare as well as eternal felicity.

ARTICLE 4. George Rapp and his associates promise to supply the subscribers jointly and severally with all the necessaries of life, as lodging, meat, drink and clothing, etc., and not only during their healthful days, but also when one or more of them become sick or otherwise unfit for labor, they shall have and enjoy the same support and maintenance as before; and if, after a short or long period, the father or mother of a family should die, or be otherwise departed from the community and leave a family behind, they shall not be left widows or orphans, but partake of the same rights and maintenance as long as they live or remain in the community, as well in sick as healthful days, the same as before, or as circumstances or necessity may require.

ARTICLE 5. And if the case should happen as stated above, that one or more of the subscribers after a short or a long period, should break their promise and could or would not submit to the laws and regulations of the church or community, and for that or any other cause would leave Harmony, George Rapp and his associates promise to refund him or them, the value of his or their property brought in, without interest, in one, two or three annual installments, as the sum may be, large or small; and if one or more of them were poor and brought nothing in the community, they shall, provided they depart openly and orderly, receive a donation

in money, according to his or their conduct while a member or as he or their circumstances and necessities may require, which George Rapp and his associates shall determine at his or their departure.

In confirmation whereof both parties have signed their names.

Done in Harmony, February 15, 1805.

EXHIBIT "B."

Translation from the German Article executed at Harmony, Indiana.

Be it hereby known that to-day (20th January, 1821), in the year of our Lord one thousand eight hundred and twenty-one, the present agreement, treaty and alliance was made and concluded between us, the following persons, to-wit: N. N., etc., of the one part and George Rapp and his association of the other part.

After the aforesaid persons became sufficiently acquainted with the principles, rules and regulations of the community of George Rapp and his association, by virtue of their religious principles, they have after long and mature reflection, out of their own free will, determined to join the community of said George Rapp and his association in Harmony, Posey County, State of Indiana; to that purpose the aforesaid persons bind themselves and promise solemnly by these presents, to comply with the ordinances, rules and regulations of the community, and render due obedience to the superintendents ordained by the community, and to perform as much as possible all occupations and labors to which they are ordered, and help to promote the benefit, happiness and prosperity of the community. And if the case should happen that the aforesaid persons, jointly or singly after a short or long period of time, leave the community for any cause whatever, they hereby bind themselves jointly and each for himself separately never and in no case to bring any account, nor make any claim, either against the association or any individual member thereof, for their labor and services rendered; also, never to make any demand, ask or claim any other payment, under any name and description whatsoever, but will do and have done all things out of Christian love for the good and benefit of the community, or else take it as a gift if George Rapp and his association willingly give them something.

However, George Rapp and his association, in return adopt the aforesaid persons into their community, whereby they obtain prerogative to partake of all meetings for divine services, by which they receive in church and school the necessary instructions, requisite and needful for their temporal benefit, and happiness and eternal felicity. George Rapp and his association bind themselves further to supply the aforesaid persons with all the wants and necessaries of life, to wit: meat, drink and clothing, etc., and indeed not only during their healthful days, but also if all or any of them get sick or otherwise infirm and unable to work, they shall, as long as they remain members of the community, receive and enjoy the same support as before, during their better days, or as their circumstances may require.

In confirmation of the presents we, both parties, have hereunto set our hands and seals. Done in Harmony, the day and year above stated.

EXHIBIT "C."

Copy of the Articles of Association, Executed at Harmony, March 9th, 1827.

WHEREAS, By the favor of Divine Providence, an association or community, has been formed by George Rapp and many others, upon the basis of Christian Fellowship, the principles of which being faithfully derived from the sacred Scriptures, include the government of the patriarchial age, united to the community of property adopted in the days of the apostles, and wherein the single object sought is to approximate, so far as human imperfection may allow, to the fulfillment of the will of God, by the exercises of those affections, and the practice of those virtues which are essential to the happiness of man in time and throughout eternity;

AND WHEREAS, It is necessary to the good order and well-being of said association that the condition of membership should be clearly understood, and that the rights, and privileges, and duties of every individual therein should be so defined as to prevent mistake or disappointment on the one hand and contention or disagreement on the other.

Therefore, Be it known to all whom it may concern: That we, the undersigned, citizens of Beaver County, in the Commonwealth of Pennsylvania do severally and distinctly, each for himself, cove-

nant, grant and agree to and with the said George Rapp and his associates as follows, to-wit:

ARTICLE 1. We, the undersigned, for ourselves, our heirs, executors and administrators, do hereby give, grant and forever convey to the said George Rapp and his associates and their heirs and assigns, all our property, real, personal and mixed, whether it be lands and tenements, goods and chattels, money or debts due to us, jointly or severally, in possession, or in remainder, or in revision, or in expectancy, whatsoever or wheresoever, without evasion, or qualification, or reserve, as a free gift or donation, for the benefit and use of the said association or community; and we do hereby bind ourselves, our heirs, executors and administrators to all such other acts as may be necessary to vest a perfect title to the same in the said association, and to place the said property at the full disposal of the superintendents of the said community without delay.

ARTICLE 2. We do further covenant and agree to and with the said George Rapp and his associates that we will severally submit faithfully to the laws and regulations of the said community, and will at all times manifest a cheerful and ready obedience toward those who are or may be appointed as superintendents thereof, holding ourselves bound to promote the interests and welfare of the said community, not only by the labor of our own hands but also that of our children or families and others who now are or hereafter may be under our control.

ARTICLE 3. If, contrary to our expectations, it should so happen that we could not render the faithful obedience aforesaid, and should be induced, from that or any other cause to withdraw from the said association, then and in such case, we do expressly covenant and agree to and with the said George Rapp, and his associates that we will never claim or demand, either for ourselves, our children, or for any one belonging to us, directly or indirectly, any compensation, wages or reward whatever, for our or their labor or services rendered to the said community, or to any member thereof; but whatever we or our families jointly or severally shall or may do, all shall be held and considered as a voluntary service for our brethren.

ARTICLE 4. In consideration of the premises, the said George Rapp, and his associates, do by these presents adopt the undersigned, jointly and severally, as members of the said community, whereby each of them obtains the privilege of being present at every religious meeting, and of receiving, not only for themselves, but also for their children and families, all such instructions in

church and school as may be reasonably required, both for their temporal good and for their eternal felicity.

ARTICLE 5. The said George Rapp, and his associates, further agree to supply the undersigned severally with all the necessaries of life, as clothing, meat, drink, lodging, etc., for themselves and their families; and this provision is not only limited to their days of health and strength, but when any of them shall become sick, infirm, or otherwise unfit for labor, together with such medicine, care and attendance and consolation as their situation may reasonably demand. And if at any time after they have become members of the association, the father or mother of a family should die or be otherwise separated from the community, and shall leave their family behind, such family shall not be left orphans or destitute, but shall partake of the same rights or maintenance as before, so long as they remain in the association, as well in sickness as in health, and to such extent as their circumstances may require.

ARTICLE 6. And if it should happen as above mentioned that any of the undersigned should violate his or her agreement, and would or could not submit to the laws and regulations of the church or community, and for that or any other reason should withdraw from the association, then the said George Rapp, and his associates agree to refund to him or them the value of all such property, without interest, as he or they may have brought into the community in compliance with the first article of this agreement, and the said value to be refunded in one, two or three annual installments, as the said George Rapp and his associates shall determine. And if the person or persons so withdrawing themselves were poor, and brought nothing into the community, yet if they depart openly and regularly, they shall receive a donation in money, according to the length of their stay, and to their conduct, and to such an amount as their necessities may require, in the judgment of the superintendents of the association.

In witness whereof and in testimony that the undersigned have become members of the said community, upon the conditions aforesaid, they have hereunto severally and each for himself set their hands and seals on the 9th day of March, in the year 1827.

In the presence of JOHN HOPKINS
AND
CHARLES S. VOLTZ.

EXHIBIT "D."

Supplementary Article of 1836.

WHEREAS, The Harmony Society, consisting of George Rapp and many others, now established in the town of Economy, in Beaver County, Pennsylvania, did, on the 9th of March, 1827, enter into certain articles of association, of which the 6th in number, is as follows, viz.:

"And it would so happen as above mentioned, that any of the undersigned should violate his or their agreement, and would or could not submit to the laws and regulations of the church or community, and for that or any other cause should withdraw from the association, then the said George Rapp and his associates agree to refund to him or them the value of all such property as he or they may have brought into the community, in compliance with the first article of this agreement, the said value to be refunded without interest in one, two or three annual installments, as the said George Rapp and his associates shall determine.

"And if any person or persons so withdrawing themselves were poor, and brought nothing into the community, yet if they depart openly and regularly, they shall receive a donation in money, according to the length of their stay and to their conduct, and to such amount as their necessities may require in the judgment of the superintendents of the association."

AND WHEREAS, The provisions of the said 6th article though assented to at the time, manifestly depart from the great principle of a community of goods and tend to foster and perpetuate a feeling of inequality at variance with the true spirit and objects of the association;

AND WHEREAS, The principle of restoration of property, besides its pernicious tendency, is one which cannot now be enforced with uniformity and fairness, inasmuch as the members of the association in the year 1818, under a solemn conviction of the truth of what is above recited, did destroy all record and memorial of the respective contributions up to that time;

AND WHEREAS, Continued happiness and prosperity of the association, a more intimate knowledge of each other have removed from the minds of all members the least apprehension of injustice and bad faith;

Now, Therefore, Be it known by these presents, that the undersigned, with a view to carry out fully the great principles of our union, and in consideration of the benefits to be derived therefrom,

do hereby solemnly enter into covenants, and agree with each other as follows:

1st. The said 6th article is entirely annulled and made void, as if it had never existed; all others remain in full force as heretofore.

2nd. All the property of the society, real, personal and mixed, in law or equity, and howsoever contributed or acquired shall be deemed now and forever joint and indivisible stock. Each individual is to be considered to have finally and irrevocably parted with all his former contributions, whether in land, goods, money or labor; and the same rule shall apply to all future contributions whatever they may be.

3rd. Should any individual withdraw from the society, or depart this life, neither he, in the one case nor his representatives in the other, shall be entitled to demand an account of said contributions, whether in land, goods, money or labor, or to claim anything from the society as matter of right. But it shall be left altogether to the discretion of the superintendent to decide whether any, and if any, what allowance shall be made to such member or his representatives as a donation.

Invoking the blessing of God on this sacrifice of all narrow and selfish feelings to the true purposes of the association and to the advancement of our own permanent prosperity and happiness, we have signed the foregoing instrument, and affixed thereunto our respective seals, at Economy, this 21st day of October, 1836.

Signed and sealed in the presence of

(Signed by 391 members.)
(Signed by Plaintiff and others.)

CHARLES D. VOLTZ,
WILLIAM P. BAUM.

EXHIBIT "E".

Articles of Association of the Harmony Society, entered 14th of August, 1847.

WHEREAS, By the decree of God, the venerable Patriarch and much-beloved founder and leader of the Harmony Society, George Rapp, has departed this life, whereby its members are deprived of his Christian fellowship and religious ministry, and of his superintendence in their temporal affairs, and whereas, in consequence of this deeply afflicting dispensation it has become neces-

sary to the good order and well-being of the association that some plan should be agreed upon to regulate its future affairs, promote its general welfare and preserve and maintain it upon its original basis;

Therefore, Be it known to all whom it may concern, that we the unndersigned, surviving and remaining memebers of the Harmoy Society, and constituting the same, do severally and distinctly, each for himself, covenant, grant and agree to and with all the others thereof, and with those who shall hereafter become members as follows: That is to say,

ARTICLE 1st. We do hereby solemnly recognize, re-establish and continue the articles of our association (the sixth section excepted) entered into at Economy on the 9th day of March, A. D. 1827, in the presence of John H. Hopkins and Charles L. Voltz and the supplement thereto, adopted at the same place on the 31st day of October, A. D. 1836, in the presence of Charles L. Voltz and William P. Baum, except so far as the same are affected by the death of the said George Rapp, or hereinafter altered or modified, and to this extent we declare the said articles to remain in full force.

ARTICLE 2ND. We hereby ordain and establish a Board of Elders, which shall consist of nine members of the Harmony Society and their successors, to be chosen as hereinafter provided: John Stahl, John Schnabel, Adam Nachtrieb, Matthew Scholle, Joseph Hoerle, John Eberle, Romulus L. Baker, Jacob Henrici, Jonathan Lenz shall be the first board.

ARTICLE 3RD. The Board of Elders shall have and exercise the following powers, to wit: 1st. To regulate and manage exclusively the internal temporal concerns of the Harmony Society; to appoint and remove superintendents in the several departments of industry; to make regulations and give orders in relation to their business operations, and generally to take care that the members perform the duties assigned to them. 2nd. To determine all disputes and misunderstandings amongst the members of the society; to advise if necessary, reprove any member who may be in fault or found delinquent in his duty. 3rd. To admit new members into the society and to expel them therefrom. New members when admitted shall subscribe this agreement as the evidence of their membership, and of the rights acquired by, and the duties imposed upon them. 4th. To establish regulations for the maintenance and improvement of the morals of the society and for the instruction of its members. 5th. To appoint one or more of its members spiritual leaders and instructors with such authority in relation to church discipline as shall be conferred by the board. 6th. To remove from the Board of Elders and to declare his seat vacated, also to remove

from office either or both of the trustees hereinafter appointed for the management of the external affairs and their successors in office. 7th. To fill all vacancies in the Board of Elders occasioned by the death, resignation or removal from office of any of its members and their successors, and so as often as a vacancy shall occur, to fill all vacancies in the office of trustee, when either or both of the trustees or their successors shall die, resign his office or be removed from the same, and so often as a vacancy shall occur. 8th. The concurrence of six members of the Board of Elders shall be deemed the act of the board and a legal exercise of any of the powers hereinbefore conferred on the said board. 9th. A record book shall be kept in which the Board of Elders shall enter all proceedings that they shall consider of sufficient importance to be preserved. In all controversies, judicial or otherwise, in which the society or any of its members may be a party, such record shall be full and absolute evidence of the facts and proceedings therein contained, and the affirmation of any elder shall be competent evidence of the identity of the said record.

ARTICLE 4TH. We do further ordain and establish a Board of Trustees for the exclusive management of the external business and affairs of the society, which board shall consist of two persons, who shall be members of the Board of Elders, and their successors who shall be appointed as hereinbefore provided. Romulus L. Baker and Jacob Henrici shall be the first Board of Trustees.

ARTICLE 5TH. The said trustees shall jointly and severally have and exercise the powers following, to wit: 1st. In their own names or that of either of them, or otherwise, to purchase and sell, deal, barter, exchange and traffic, make all contracts and bargains in the prosecution of the business, to invest the funds in stocks and other securities, and make transfers and assignments, to collect debts, receive and pay out moneys, settle claims, compromise disputes, institute legal proceedings, appoint and dismiss agents, clerks and attorneys in fact, and at law, and generally to transact all the external business affairs of the society. 2nd. To make donations to seceding and excluded members and to the representatives of those who are deceased, and for such benevolent and charitable purposes as they may deem prudent and fit. 3rd. The said trustees shall have power jointly to purchase real estate in their own names and also in their joint names, to grant, bargain, sell and convey all or any of the lands and tenements now or hereafter owned by or belonging to the said society, and for this purpose to execute deeds of conveyance in fee simple or otherwise in their joint names, but the proceeds of all such sales shall be held in trust for the society. 4th. For the purpose of providing effectual and convenient remedy

in law for all injuries to the property of the said society, real and personal, by trespass, ouster, detention, conversion or otherwise. The said trustees are hereby invested with the rights of possession, entry and action in their own names as fully and to all intents and purposes as do and may exist in the said society, and to effectuate this object more completely and in consideration thereof, we grant and transfer to the said trustees all such title and interest in the said property as shall be necessary therefor. The proceeds of all suits to be brought shall be in trust for the society. 5th. The powers hereby vested in the said trustees shall extend to and embrace all the property of said society, real, personal or mixed, whether standing or held in the name of the late Frederick Rapp, the said George Rapp, or in any other name or form whatsoever.

ARTICLE 6TH. It is hereby distinctly and absolutely declared and provided that all the property, real, personal and mixed, which now or hereafter shall be held or acquired by any trustee or trustees or persons under them, is and shall be deemed the common property of said society, and each trustee now or hereafter appointed, hereby disclaims all personal interest in the present resources and future earnings of the society, other than that of a member thereof, according to the articles of association hereby re-established and continued, and according to the present agreement.

IN WITNESS WHEREOF, We, the undersigned members of the Harmony Society, who constitute the said association, have, to these articles executed in English and in German, hereunto set our hands and seals at Economy, in Beaver County, this 12th day of August, A. D. 1847.

Read over to and signed and sealed by the several persons whose names are subscribed in the presence of us.

Signed by W. P. BAUM and others.

(Duly Acknowledged.)

Recorded in Beaver County, Pa., Deed Book 25, page 121, etc.

EXHIBIT "F."

Agreement, Ratification and Confirmation of and by the Members of the Harmony Society, at Economy, Beaver County, Pa. Recorded July 31st, 1890, Deed Book 125, Page 415, Beaver County.

WHEREAS, After the death of George Rapp, the founder and

leader of the Harmony Society, to wit: On the 12th day of August, A. D. 1847. All he then members of the said society, by articles and a compact in writing of that date, duly executed at Economy, in the County of Beaver, State of Pennsylvania, in the presence of William P. Baum, Francis LeGoulan, and Andrew Bimber, and subsequently recorded in the office for recording deeds, in and for the County of Beaver, in Deed Book, vol. 25, page 121, etc., adopted and established a system and plan for the regulation and government of the society, the management of their internal temporal affairs, as also for the management and transaction of their external affairs, and business in and by which articles John Schnabel, Adam Nachtrieb, John Eberly, Matthew Schottle, Joseph Hoerhla, John Eberly, Romulus L. Baker, Jacob Henrici and Jonathan Lenz were appointed and constituted the first Board of Elders therein established; and Romulus L. Baker and Jacob Henrici, two members of the society and of the Board of Elders, aforesaid, were therein appointed and constituted the members of the Board of Trustees of said society, provided for and established, which Board of Elders as thus constituted, and their successors, duly appointed, under the authority and in the manner therein granted and provided, have managed the internal temporal affairs of the society as therein directed until the present time, the present Board of Elders being constituted and consisting of Jacob Henrici, Ernest Woelfel, Michael Stiab, Johannes Schied, Moritz J. Fredericks, Gottlieb Lauppe, J. Jacob Nicklaus, Herman Fischern and John S. Duss; and Romulus L. Baker and Jacob Henrici, the trustees aforesaid, and their successors, were and by said articles authorized and empowered, jointly and severally in their own names, or that of either of them, to make all contracts, purchase and sell, invest the funds of the society, collect debts, receive and pay moneys, compromise and settle claims and disputes, appoint and discharge attorneys in fact and at law, institute and conduct legal proceedings and generally to manage and transact all the external business and affairs of the society, to make donations to withdrawing members and for charitable purposes, etc. Also jointly in their own names, to grant, bargain, sell and convey all or any of the lands, tenements and real estate then or thereafter owned or belonging to the society, and for this purpose to excute deeds of conveyance in fee simple or otherwise, in their joint names, etc., as by reference to said articles recorded as aforesaid will more fully appear:

And Whereas, Romulus L. Baker and Jacob Henrici accepted said trust, acted as trustees of said Harmony Society, managing and transacting their business and affairs under the authority aforesaid, until the death of the said Romulus L. Baker, on the 11th day

of January, 1868, whereupon in pursuance of the authority conferred by and according to the terms and provisions of said articles recorded as aforesaid, Jonathan Lenz, a member of said society, and of the Board of Elders, aforesaid, was duly appointed and constituted a member of the Board of Trustees, to fill the vacancy occasioned by the death of said Romulus L. Baker, and thereafter the external business and affairs thereof were managed and conducted and transacted by the said Jacob Henrici and Jonathan Lenz as trustees, the same being managed, conducted and transacted under and in accordance with the authority given and conferred by the articles aforesaid until the death of said Jonathan Lenz, on the 21st day of January, 1890, whereupon the Board of Elders, consisting of the members last hereinbefore named and mentioned as constituting said board, in pursuance of the authority and direction of the articles aforesaid, appointed and constituted Ernest Woelfel (also a member of said society and of said Board of Elders) a trustee, to fill the vacancy thus occasioned in the said Board of Trustees, and the said Jacob Henrici and Ernest Woelfel have since that time conducted and transacted the business affairs of the society according to the terms and provisions of the articles aforesaid;

And Whereas, More than forty years have elapsed since the execution of the articles and compact aforesaid, adopting and establishing the system and plan for the regulation of the government of the internal affairs of the society, and the management, control and transaction of the external business and affairs thereof, and many changes have taken place in the membership of the society, most of the then members having since died, and others embracing part of the undersigned, having been admitted and become members thereof in accordance with the terms and provisions of said articles, all of the members of the Board of Elders, except said Jacob Henrici, designated and appointed in the said articles, having died, as also their successors in said board, and all of whom, as members of said board, managed the internal affairs of the society as above recited, and two of those who have been members of the Board of Trustees, and actively engaged in the management and transaction of the external business of the society, under the authority of the articles aforesaid, either severally and in their own names as trustees, or jointly with their co-trustee, Jacob Henrici, still surviving and in their joint names as such trustees, making contracts, purchasing and selling personal property, investing, collecting, receiving and paying moneys of the society, selling claims, purchasing real estate, selling real estate of the society, executing

and delivering deeds, assignments and transacting all the external business and affairs of the society have also died;

And Whereas, Said society, and the undersigned, the present members thereof, have received and enjoyed, and do now enjoy the benefits and advantages resulting from the management and regulation of the internal affairs thereof by the Board of Elders as aforesaid, as also the benefits and profit of the external business and affairs thereof, managed and transacted by those who constituted the Board of Trustees as aforesaid, and it is deemed right and proper that we, the undersigned surviving members of the society, who entered into the articles and compact aforesaid, and the others who have since become members as aforesaid, should recognize, approve and reaffirm said articles, and approve and confirm what has been done for and on behalf of the society, under and in pursuance thereof:

Now, Therefore, Be it known to whom it may concern, that we the undersigned, the surviving and present members of the Harmony Society, at Economy, aforesaid, and all the present members of said society, do severally, and each for himself, covenant, grant and agree to and with the others, and each and all the other members aforesaid, and signers hereof and with those who shall hereafter become members as follows, that is to say:

1st. We do hereby solemnly recognize, approve, reaffirm and continue the articles of agreement and compact of our association entered into at Economy, on the 12th day of August, 1847, and recorded in the recorder's office of Beaver County, as set forth in the preamble hereto and declare the same to be in full force, as a whole and all parts thereof, including the agreements and compacts mentioned and designated in the first article thereof, as fully and to the same extent as said mentioned agreements were recognized and established by said first article.

2nd. We do hereby approve and confirm any and all acts, matters and things done and transacted by the Board of Elders of the Harmony Society, as the same was from time to time constituted, since the date of the articles aforesaid, establishing said board, and we hereby ratify and confirm the appointment of the present Board of Elders, to wit: Jacob Henrici, Ernest Woelfel, Michael Staib, Johannes Schied, Moritz Fredericks, Gottfried Lauppe, J. Jacob Nicklaus, Herman Fischern and John S. Duss.

3rd. We do also hereby approve, ratify and confirm all acts, matters and things done, transacted and performed by the Board of Trustees of the Harmony Society, constituted first, of Romulus L. Baker and Jacob Henrici, until January 11th, 1868; afterwards, and from that date until January 21st, 1890, of Jacob Henrici and

Jonathan Lenz, and since the last mentioned date, of Jacob Henrici, Ernest Woelfel, hereby ratifying, confirming, holding, declaring as good and effectual in law and in equity, all acts, matters and things done, transacted and performed by each and all of said trustees in the purchase and sale of personal property, and in the making of contracts, investment of funds, purchase, sale and transfer of stocks, bonds and other securities, loaning or borrowing money, collection and payment of moneys, settlement or compromise of claims or disputes, in the institution and prosecution of legal proceedings, in the employment and discharge of attorneys in fact and at law, in the making of donations, in the purchase of real estate, and in the sale thereof, in the execution and delivery of deeds, conveyances, transfers and assignments, whether of and pertaining to real or personal estate, in the execution or delivery of notes or obligations of any kind, and generally all acts heretofore done by said trustees, in the conducting, managing and transacting of the business of the society, and whether done by said trustee or either of them, severally and in his own name as trustee, or jointly in the joint names of himself and his co-trustee.

4th. We do also hereby approve and confirm the acts of the Board of Elders in the appointment of Ernest Woelfel, as co-trustee with Jacob Henrici, and declare said Jacob Henrici and Ernest Woelfel, the present Board of Trustees, authorized and empowered to do, perform and transact any and all business of the society, and to the full extent of the powers and authorities mentioned and designated in and conferred on the Board of Trustees, in and by the articles hereinbefore mentioned, made and entered into August 12th, 1847, and recorded as aforesaid.

In witness whereof we have hereunto set our hands and seals this 30th day of April, A. D. 1890.

JACOB HENRICI,
ERNEST WOELFEL,
JOHN S. DUSS,
AND OTHERS.

(Duly Acknowledged.)

EXHIBIT "G."

WHEREAS, The undersigned, being all the members of the Harmony Society, at Economy, Beaver County, State of Pennsylvania, deem it proper and desirable that there should be some suitable,

proper and certain evidence of membership in said society, and that the rights and powers of the trustees of said society should be more clearly defined and understood:

Now, THEREFORE, While we do hereby ratify and confirm the Articles of Agreement and compacts of our association entered into at Economy on the 12th day of August, 1847, and those of April 30th, 1890, confirmatory of the former and ratifying the acts of the Board of Elders and Board of Trustees, both of which Articles of Agreement are recorded in the recorder's office of Beaver County, and are hereby reaffirmed, we and each of us, present members of the said Harmony Society, do hereby state and declare that this declaration, agreement and grant of power is, and is to be taken and considered as supplementary to the agreements, compacts and articles above mentioned, to wit:

1st. The present members of this society and association are Jacob Henrici, John S. Duss, J. Jacob Nicklaus, Moritz J. Fredericks, Gottfried Lauppe, Johannes Schied, Franz Gillman, Hugo Miller, Conrad Hermansdoerfer, Julius Stickel, Edward Kellerman, Henry Feucht, B. Feucht, Blazsius Platz, Sigmund Stiefvater, Regina Lautenschlager, Christina Rall, Karoline Molt, Katrina Nagel, Elizabeth Beck, Lena Rall, Thirza Feucht, Rebecca Feucht, Margaret Feucht, Christine Hoerer, Susie C. Duss, Bertha Geratch, Pauline Stickel, Johanna Hermansdoerfer, Maria Diem, Dorotha Hoehr, Philipina L. Wolfangel, Gottlieb Riethmueller, Samuel Sieber and Elizabeth Sieber, and no other person or persons than those above named is a member thereof, and that for the future it is agreed that before any person can become a member of the Harmony Society, he or she shall sign or make his or her mark to his or her name on the roll of membership, which shall always be kept in the record book of the society, which book was established by the aforesaid agreement of 1847, and is the same in which are entered copies of said articles above mentioned; and shall also sign a written agreement in said book binding himself or herself to the observance and performance of all and singular the declarations, stipulations, and agreements of the members of the society as contained in the several written articles above mentioned and in these articles, and the book aforesaid containing said roll of membership shall be the sole and exclusive proof of membership in the society.

2nd. It is hereby declared and agreed that the present Board of Elders of said society are Jacob Henrici, John S. Duss, Johannes Schied, Gottfried Lauppe, Moritz J. Fredericks, J. Jacob Nicklaus, Conrad Hermansdoerfer, Hugo Miller and Gottlieb Riethmueller; and the present Board of Trustees of said society are

Jacob Henrici and John S. Duss. And we do hereby grant and assign to said trustee and their successors, and do hereby agree and declare that the legal title to any and all the property, real and personal, owned or possessed by said society, wherever the same is situated or found, is, and is to be taken and considered as fully vested in the said trustees, Jacob Henrici and John S. Duss, above named, and held by them in trust for the society, but with full and complete power and authority in said trustees, their survivors and successors, at such time or times as they may deem advisable, and for the best interests of the society to sell and dispose of the same, or any part or parcel of the same, and for this purpose to make and deliver deeds in fee simple, or for any less estate, for any or all assignments or bills of sale of said personal estate, and to execute said real estate thus sold. This declaration and power to apply to and embrace any and all lands wherever situated now or hereafter belonging to said Harmony Society, or held in trust for said society, the title to which may be, or stand, in the name of Frederick Rapp, or George Rapp, or of R. L. Baker and Jacob Henrici, trustees; Jacob Henrici and Jonathan Lenz, trustees; Jacob Henrici and Ernest Woelfel, trustees; Jacob Henrici and John S. Duss, trustees, or any or either of them and their successors, and any Board of Trustees hereafter appointed.

3rd. To remove any possible doubt or misunderstanding as to their right and power in reference thereto, we hereby give and grant to said trustees above named, Jacob Henrici and John S. Duss, and to either of them and their survivors and successors, full power from time to time, and at such times as they or either of them may deem for the true interest of the society to borrow such sum or sums of money for such length of time, at such rates of interest and upon such other terms as the said trustees, or either of them or their survivors or successors may deem advisable; and jointly or severally to give notes, bills of exchange, bonds, due bills or other evidence of debt therefor, and to secure such loan or loans of money, bonds, notes, due bills or other evidences of debt by pledge or assignment of any stocks, bonds or other personal property of any kind now belonging, or that may hereafter belong to said society, and by mortgage or mortgages upon, or deeds of trust of, all or any part of the real estate and leaseholds of real property, which said society now own or possess, or hereafter may own or possess, and for this purpose the said trustees above named, or either of them, their survivors or successors, shall have full power and authority to make, execute and deliver any and all such instruments and conveyances as may in their judgment be reason-

ably necessary to enable them, or either of them, to carry the foregoing powers into full effect.

And in the execution of any instruments or conveyances in writing or otherwise that may be or so become reasonably necessary in the exercise or execution of any of the powers hereinbefore granted, either of said trustees, their survivors or successors may execute the same, and for that purpose may sign the joint names of said trustees, as in the following form: "Jacob Henrici and John S. Duss, trustees," or "Henrici and Duss, trustees," by (name of trustee executing) "Trustee."

In Witness Whereof, we have hereunto set our hands and seals this day of December, A. D. 1892.

EXHIBIT NO. 1.

Release or Quit Claim of Hugo Miller.

Economy, Beaver County, Pa.

I, Hugo Miller, being one of the members of the Harmony Society, at Economy, Beaver County, Pa., also one of the Board of Elders of said society, and being desirous of terminating said membership and withdrawing from said society, declare that I do hereby surrender and renounce forever all my rights, interests and privileges as a member of said society; and further, in consideration of the sum of five thousand ($5,000) dollars paid to me out of the funds of said society by Duss & Sieber, trustees thereof, I hereby cancel, release and discharge any and all claims whatsoever which I, my heirs or lawful representatives may or could ever have against said society or its property or any part thereof, I hereby declaring all such claims to be fully compromised, settled and discharged.

Witness my hand and seal this eighth day of March, 1893.

Hugo Miller.

In presence of

K. Rudolf Wagner.

EXHIBIT NO. 2.

Release or Quit Claim of Blazsius Platz.

I, Blazsius Platz, a member of the Harmony Society at Economy, Beaver County, Pa., being desirous of terminating said membership and withdrawing from said society, do declare that I hereby

of my own wish and purpose surrender and renounce my membership in and connection with said society, likewise all my rights, interests and privileges as a member thereof. And further, in consideration of the sum of five thousand ($5,000) dollars in cash paid to me out of the funds of said society, by John S. Duss and Samuel Sieber, trustees, receipt whereof is hereby acknowledged, I do hereby release, cancel and discharge any and all claims whatsoever which I, my heirs, assigns or lawful representatives may or could ever have against said society or its trustees, its property or assets, or any part thereof, I hereby declaring all such claims to be fully compensated, settled, released and discharged. And I do further declare that I have received the said sum of five thousand ($5,000) dollars, and have surrendered, compromised, settled, released and discharged all claims I or my heirs, assigns or lawful representatives have or could have against said society, its trustees, its property or assets, or any part thereof, entirely at my own solicitation and without any invitation, request or solicitation so to do, by said trustees or either of them, and in full knowledge of the fact that said society owns, in addition to its property at Economy and Leetsdale, several thousand acres of land in Michigan and in Warren County, Pa.; also certain tracts of land in Allegheny County, Pa.; also stocks and bonds in various railroad, mining, manufacturing and bridge companies, to the nominal amount of several hundred thousand dollars; also various judgments, mortgages and unsold lots in Beaver Falls and New Brighton of the nominal value of several hundred thousand dollars; also that while it may be possible that the said society may have a large amount of property after the payment of its debts, I am entirely satisfied to accept as my full share and interest therein said five thousand (5,000) dollars, and I will never hereafter make any claim for other or further payment of any sum whatever, nor for the delivery of any other property of said society to me, no matter what may be the value of the property and assets of said society, after payment of its debts, and all such claims thereto being by me hereby expressly barred and discharged.

Witness my hand and seal this ninth day of June, 1893.

In presence of: BLAZSIUS PLATZ.

K. RUDOLPH WAGNER.

EXHIBIT NO. 3.

RELEASE OR QUIT CLAIM OF MORITZ J. FREDERICKS.

I, Moritz J. Fredericks, a member of the Harmony Society at

Economy, Beaver County, Pa., being desirous of terminating said membership and withdrawing from said society, do declare that I do hereby, of my own wish and purpose, surrender and renounce forever my membership in and connection with said society, likewise all my rights, interests and privileges as a member thereof. And further, inconsideration of the sum of five thousand ($5,000) dollars in cash paid to me out of the funds of said society by John S. Duss and Samuel Sieber, trustees, receipt whereof is hereby acknowledged, I do hereby release, cancel and discharge any and all claims whatsoever which I, my heirs, assigns or lawful representatives may or could ever have against said society or its trustees, its property or assets or any part thereof, I hereby declaring all such claims to be fully compensated, settled, released and discharged. And I do further declare that I have received said sum of five thousand ($5,000) dollars, and have surrendered, compromised, settled, released and discharged all claims that I or my heirs, assigns or lawful representatives have or could have against said society, its trustees, its property or assets or any part thereof, entirely at my own solicitation and without any invitation, request or solicitation so to do by said trustees or either of them in the full knowledge of the fact that said society owns, in addition to its property at Economy and Leetsdale, several thousand acres of land in Michigan and in Warren County, Pa.; also certain tracts of land in Allegheny County, Pa.; also stocks and bonds in various railroad, mining, manufacturing and bridge companies to the nominal amount of several hundred thousand dollars; also various judgments, mortgages and unsold lots in Beaver Falls and New Brighton, of the nominal value of several hundred thousand dollars; also, while it may be possible that said society may have a large amount of property after the payment of its debts, I am entirely satisfied to accept as my full share and interest therein said five thousand ($5,000) dollars, and I will never hereafter make any claim for further or other payment of any sum whatever, nor for the delivery of any other property of said society to me, no matter what may be the value of the property and assets of said society after payment of its debts; all such claims thereto being by me hereby expressly barred and discharged.

Witness my hand and seal this fifth day of June, 1893.

Witness: MORITZ J. FREDERICKS.

W. H. BREITENSTEIN.

EXHIBIT NO. 4.

RELEASE OR QUIT CLAIM OF J. JACOB NICKLAUS.

I, J. Jacob Nicklaus, a member of the Harmony Society at Econ-

omy, Beaver County, Pa., being desirous of terminating said membership and withdrawing from said society, do declare that I do hereby, of my own wish and purpose, surrender and renounce forever my membership in and connection with said society, likewise all of my rights, interests and privileges as a member thereof. And further, in consideration of the sum of five thousand ($5,000) dollars in cash paid to me out of the funds of said society by John S. Duss and Samuel Sieber, trustees, receipt whereof is hereby acknowledged, I do hereby release, cancel and discharge any and all claims whatsoever which I, my heirs, assigns or lawful representatives may or could ever have against said society by its trustees, its property or assets, or any part thereof, I hereby declaring all such claims to be fully compensated, settled, released and discharged. And I do further declare that I have accepted said sum of five thousand ($5,000) dollars, and have surrendered, compromised, settled, released and discharged all claims that I or my heirs, assigns or lawful representatives have or could have against said society, its trustees, its property or assets, or any part thereof (entirely at my own solicitation and without any invitation, request or solicitation so to do by said trustees or either of them), in the full knowledge of the fact that said society owns, in addition to its property at Economy and Leetsdale, several thousand acres of land in Michigan and in Warren County, Pa.; also certain tracts of land in Allegheny County, Pa.; also stocks and bonds in various railroad, mining, manufacturing and bridge companies, to the nominal amount of several hundred thousand dollars; also various judgments, mortgages and unsold lots in Beaver Falls and New Brighton of the estimated value of several hundred thousand dollars; also, while it may be possible that said society may have a large amount of property after the payment of its debts, I am entirely satisfied to accept as my full share and interests therein said five thousand ($5,000) dollars, and I will never hereafter make any claim for further or other payment of any sum whatever, nor for the delivery of any other property of said society to me, no matter what may be the value of the property and assets of said society after payment of its debts (all such claims thereto being by me hereby expressly barred and discharged).

Witness my hand and seal this fifth day of May, 1893.

In the presence of: J. JACOB NICKLAUS.

FREDERICK VIERECK.

EXHIBIT NO. 5.

RELEASE OR QUIT CLAIM OF SIGMUND STIEFVATER.

I, Sigmund Stiefvater, a member of the Harmony Society at Economy, Beaver County, Pa., being desirous of terminating said membership and withdrawing from said society, do declare that I do hereby, of my own wish and purpose, surrender and renounce forever my membership in and connection with said society, likewise all my rights, interests and privileges as a member thereof; and further, in consideration of the sum of five thousand ($5,000) dollars in cash paid to me out of the funds of said society by John S. Duss and Samuel Sieber, trustees, receipt whereof is hereby acknowledged, I do hereby release, cancel and discharge any and all claims whatsoever which I, my heirs, assigns or lawful representatives may or could ever have against said society or its trustees, its property or assets or any part thereof, I hereby declaring all such claims to be fully compensated, settled, released and discharged. And I do further declare that I have accepted said sum of five thousand ($5,000) dollars, and have surrendered, compromised, settled, released and discharged all claims that I or my heirs, assigns or lawful representatives have or could have against said society, its trustees, its property or assets or any part thereof (entirely at my own solicitation and without any invitation, request or solicitation so to do, by said trustees or either of them), in the full knowledge of the fact that said society owns, in addition to its property at Economy and Leetsdale, several thousand acres of land in Michigan and in Warren County, Pa.; also certain tracts of land in Allegheny County, Pa.; also stocks and bonds in various railroad, mining, manufacturing and bridge companies to the nominal amount of several hundred thousand dollars; also various judgments, mortgages and unsold lots in Beaver Falls and New Brighton of the estimated value of several hundred thousand dollars; also, while it may be possible that said society may have a large amount of property after the payment of its debts, I am entirely satisfied to accept as my full share and interest therein said five thousand ($5,000) dollars, and I will never hereafter make any claim for further or other payment of any sum whatever, nor for the delivery of any other property of said society to me, no matter what may be the value of the property and assets of said society after payment of its debts (all such claims thereto being by me hereby expressly barred and discharged).

Witness my hand and seal this seventeenth day of May, 1893.

In presence of: SIGMUND STIEFVATER.

W. H. BREITENSTEIN.

This release was translated into German by the trustees, John S. Duss and Samuel Sieber, and he said that he understood the same before signing it.

W. H. BREITENSTEIN.

EXHIBIT NO. 6.

RELEASE OR QUIT CLAIM OF ELIZABETH F. SIEBER.

I, Elizabeth F. Sieber, a member of the Harmony Society at Economy, Beaver County, Pa., being desirous of terminating said membership and withdrawing from said society, do declare that I do hereby, of my own wish and purpose, surrender and renounce forever my membership in and connection with said society, likewise all my rights, interests and privileges as a member thereof; and further, in consideration of the sum of four thousand ($4,000) dollars in cash paid to me out of the funds of said society by John S. Duss and Samuel Sieber, trustees, receipt whereof is hereby acknowledged, I do hereby release, cancel and discharge any and all claims whatsoever which I, my heirs, assigns or lawful representatives may or could ever have against said society or its trustees, its property or assets or any part thereof, I hereby declaring all such claims to be fully compensated, settled, released and discharged. And I do further declare that I have received said sum of four thousand ($4,000) dollars, and have surrendered, compromised, settled, released and discharged all claims that I or my heirs, assigns or lawful representatives have or could have against said society, its trustees, its property or assets, or any part thereof, entirely at my own solicitation and without any invitation, request or solicitation so to do, by said trustees or either of them, in the full knowledge of the fact that said society owns, in addition to its property at Economy and Leetsdale, several thousand acres of land in Michigan and Warren County, Pa.; also certain tracts of land in Allegheny County, Pa.; also stocks and bonds in various railroad, mining and manufacturing and bridge companies to the nominal amount of several hundred thousand dollars; also various judgments, mortgages and unsold lots in Beaver Falls and New Brighton, of the nominal value of several hundred thousand dollars; also, while it may be possible that said society may have a large amount of property after the payment of its debts, I am entirely satisfied to accept as my full share and interest therein said four thousand ($4,000) dollars, and I will never hereafter make any claim for further or other payment of any sum whatever, nor for the delivery of any other property of said society to me, no matter

what may be the value of the property and assets of said society after payment of its debts (all such claims thereto being by me hereby expressly barred and discharged).

Witness my hand and seal this twenty-ninth day of June, 1893.

ELIZABETH F. SIEBER.

In presence of:

W. H. BREITENSTEIN.

EXHIBIT NO. 7.

RELEASE OR QUIT CLAIM OF CHRISTINE AND LEONHARD HOERER.

We, Christine Hoerer and Leonhard Hoerer, members of the Harmony Society at Economy, Beaver County, Pa., being desirous of terminating said membership and withdrawing from said society, do declare that we do each hereby of our own wish and purpose surrender and renounce forever our membership in and connection with said society, likewise all our rights, interests and privileges as members thereof; and further in consideration of the sum of five thousand ($5,000) dollars in cash paid to us out of the funds of said society by John S. Duss and Samuel Sieber, trustees, receipt thereof is hereby acknowledged, we do each hereby release, cancel and discharge any and all claims whatsoever which we or either of us, our heirs, assigns or lawful representatives may or could ever have against said society or its trustees, its property or assets or any part thereof, we each hereby declaring all such claims to be fully compensated, settled, released and discharged. And we do each further declare that we have accepted jointly and severally said sum of five thousand ($5,000) dollars, and have surrendered, compromised, settled, released and discharged all claims that we or our heirs, assigns or lawful reprepsentatives have or could have against said society, its trustees, its property or assets or any part thereof, entirely at our own solicitation and without any invitation, request or solicitation so to do, by said trustees or either of them in the full knowledge of the fact that said society owns, in addition to its property at Economy and Leetsdale, several thousand acres of land in Michigan, and in Warren County, Pa., also certain tracts of land in Allegheny County, Pa., also stocks and bonds in various railroads, mining, manufacturing and bridge companies to the nominal amount of several hundred thousand dollars; also various judgments, mortgages and unsold lots in Beaver Falls and New Brighton of the nominal value of several hundred thousand dol-

lars; also while it may be possible that said Society may have a large amount of property after the payment of its debts we are entirely satisfied to accept as our full share and interest therein said five thousand ($5,000) dollars, and that we or either of us will never hereafter make any claim for further or other payment of any sum or sums whatever, nor for the delivery of any other property of said society to us or either of us, no matter what may be the value of the property and assets of said society, after payment of its debts; all such claims thereto being by us and either of us hereby expressly barred and discharged.

Witness our hands and seals this twenty-third day of June, 1893.

CHRISTINE HOERER,
LEONHARD HOERER.

In the presence of
W. H. BREITENSTEIN.

EXHIBIT NO. 8.

RECEIPT—LENA FRITSCH.

"After having become on the 14th day of February of this year a member of the Harmony Society at Economy, I have this day (October 22nd, 1890) withdrawn myself, of my own free will therefrom, and have ceased to be a member of said society; have also received this day from Henrici and Duss, trustees, ninety-five ($95) dollars, in order to pay my traveling expenses and such like, which sum is in full of all my claims on said society or any member thereof.

"Witness "LENA FRITSCH."

"H. GASSER,
"J. E. HIRSCH."

EXHIBIT NO. 9.

RECEIPT—LENA FRITSCH.

"The undersigned hereby declares that she has received from Messrs. Henrici and Duss, trustees, the sum of twenty-four ($24) dollars for the purpose of an advance to go on a trip, and she promises herewith to repay this sum in case her circumstances in Germany shall make it possible for her to spare this money.

"Witness my hand, this 23rd day of October, 1890.
Attested by "LENA FRITSCH."
J. E HIRSCH.

EXHIBIT NO. 10.

RELEASE OR QUIT CLAIM OF HENRY FEUCHT ET AL.

The undersigned, members of the Harmony Society at Economy, Beaver County, Pennsylvania, being desirous of withdrawing from said society and terminating our membership therein, do declare that we and each of us of our wish and purpose surrender and renounce forever, our membership in and connection with said society, as also all our rights, interests and privileges as members thereof; and further in consideration of the sum of five thousand six hundred dollars to each of us in hand paid, out of the funds of said society by John S. Duss and Samuel Sieber, trustees thereof, the receipt whereof we do each hereby acknowledge (the aggregate amount being twenty-eight thousand), and the further consideration of the conveyance to us of a tract of eight acres more or less, of land situate in the borough of McKees Rocks (late Chartiers), Allegheny County, Pennsylvania, we have released, quit-claimed and discharged and by these presents do each release, quit-claim and discharge forever the said Harmony Society, its trustees and legal representatives and its property and assets of whatever name, real and personal, wherever the same may be or be situate, of and from any and all claim and claims, demand or demands of any and every nature and kind, which we or either of us, as members of said society or personally, have or might or could have or assert or maintain at any time hereafter against said society, its trustees or legal representatives, or its property, whether for labor done, deposits, property or funds received by said society from us at any time, or from any other person or persons for us, or either of us, and whether the same were in any way received in trust or otherwise, so that at no time hereafter shall we or either of us, our or either of our heirs or legal representatives have, assert or maintain any such claim or claims, demand or demands against said society, its trustees or legal representatives, or its property or assets or any part thereof, but thereof and therefrom shall forever be debarred by these presents.

And we and each of us do further declare that we have compromised, settled, released, quit-claimed and discharged said society, its trustees and its property and assets of and from all claim

and claims, demand or demands as aforesaid, with full knowledge of all articles, articles of association, compacts and agreements by and between the members of said society, and any rights we or either of us have or might or could have thereunder, and of the property of said society, that in addition to its property at Economy, it owns several thousand acres of land in Michigan and in Warren County, Pennsylvania, also certain parcels and lots of land in Allegheny County, Pennsylvania, and in Beaver Falls, New Brighton and Rochester, Beaver County, Pennsylvania, etc., as also bonds and stocks of railroad, mining, manufacturing and other corporations of the nominal value of several hundred thousand dollars, and divers judgments, mortgages, notes, etc., and that said society may have property worth several hundred thousand dollars left after the payment of its debts and liabilities, and with full knowledge of all these facts, we have each accepted the sums and consideration aforesaid in full satisfaction of any possible claim we or either of us have or may or can hereafter have or assert against said society.

We do also hereby ratify, approve and confirm the articles of agreement and grant of power to the trustees of said society to borrow money therefor and secure the same by mortgage or mortgages of its property or any portion thereof or otherwise, etc., etc., as contained in the instrument of writing executed by all the then members of the society but Benjamin Feucht and Rebecca, his wife, and Henry Feucht and Margaret his wife, dated the 20th day of December, 1892, and recorded in the office for recording deeds, etc., in and for the County of Beaver aforesaid.

In witness whereof we have hereto set our hands and seals this sixteenth day of May, A. D. 1893.

Signed and sealed and delivered
in presence of

M. F. MECKLEM.

HENRY FEUCHT, [SEAL]
MARGARET FEUCHT, [SEAL]
BENJ. FEUCHT, [SEAL]
REBECCA FEUCHT, [SEAL]
THIRZA FEUCHT. [SEAL]

EXHIBIT NO 12.

RELEASE OR QUIT CLAIM OF SAMUEL AND ELIZABETH F. SIEBER.

We, Samuel Sieber and Elizabeth F. Sieber, husband and wife,

members of the Harmony Society at Economy, Beaver County, Pa., being desirous of terminating said membership and withdrawing from said society, do declare that we do hereby of our own wish and purpose surrender and renounce forever our membership in and connection with said society, likewise all our rights, interests and privileges as members thereof; and further, in consideration of the sum of five thousand ($5,000) dollars in cash paid to us out of the funds of said society by John S. Duss and Gottlieb Riethmueller, trustees, receipt whereof is duly acknowledged, we do hereby release, cancel and discharge any and all claims whatsoever which we, our heirs, assigns or lawful representatives may or could ever have against said society or its trustees, its property or assets or any part thereof, we hereby declaring all such claims to be fully compensated, settled, released and discharged. And we do further declare that we have received said sum of five thousand ($5,000) dollars and have surrendered, compromised, settled, released and discharged all claims that we, or our heirs, assigns or lawful representatives have or could have against said society, its trustees, its property or assets or any part thereof, entirely at our own solicitation and without any invitation, request or solicitation so to do by said trustees or either of them, in the full knowledge of the fact that the said society owns in addition to its property at Economy and Leetsdale several thousand acres of land in Michigan (and in Warren County, Pa.), also certain tracts of land in Allegheny County, Pa., also stocks and bonds in various railroad, mining, manufacturing and bridge companies to the nominal amount of several hundred thousand dollars; also various judgments, mortgages and unsold lots in Beaver Falls and New Brighton of the nominal value of several hundred thousand dollars; also while it may be possible that said society may have a large amount of property after the payment of its debts, we are entirely satisfied to accept as our full share and interest therein the said five thousand ($5,000) dollars, and we will never hereafter make any claim for further or other payment of any sum whatever, nor for the delivery of any other property of said society to us, no matter what may be the value of the property and assets of said society after payment of its debts; all such claims thereto being by us hereby expressly barred and discharged.

Witness our hands and seals this 6th day of July, 1893.

ELIZABETH F SIEBER.
SAMUEL SIEBER.

In the presence of:
FRED. T. GILBERT.

EXHIBIT NO. 12½.

RELEASE OR QUIT CLAIM OF JULIUS AND PAULINE STICKEL AND BERTHA GERATCH.

ECONOMY, PA., MARCH 29TH, 1893.

We, Julius Stickel, Pauline Stickel and Bertha Geratch, being each a member of the Harmony Society at Economy, Beaver County, Pa., and being desirous of terminating said membership and withdrawing from said society, do declare that we do each hereby, of our own wish and purpose, surrender and renounce forever, our membership in and connection with said society, likewise all our rights, interests and privileges as members thereof. And further, in consideration of the sum of three thousand five hundred dollars ($3,500) in cash paid to Julius Stickel, for the joint account of himself, said Pauline Stickel and Bertha Geratch, out of the funds of said society, by John S. Duss and Samuel Sieber, trustees, receipt whereof is hereby acknowledged, we do each hereby cancel, release and discharge any and all claims whatsoever, which we, or either of us, our or either of our heirs or lawful representatives may or could ever have against said society, or its property or assets or any part thereof; we each hereby declaring all such claims to be fully compensated, settled and discharged. And we do each further agree and declare that we jointly and severally accept said sum of money and declare all our claims against said society compensated, settled and discharged, in full knowledge of the condition of said society as disclosed by the affidavits of Dickson and others filed in the suit of Feucht and others against Duss and Sieber, trustees, in Common Pleas Court of Beaver County, Pa., and that we do each know that said society is the owner of stocks and bonds of the nominal value of several hundred thousand dollars, also of judgments, mortgages and unsold real estate and buildings in Beaver Falls of the nominal value of between two and three hundred thousand dollars; also of certain lands in Warren and Forest Counties, Pa., and in Michigan and in Allegheny County, Pa.

Also, that while that it may be that said society may have and be the possessor of several hundred thousand dollars worth of property after paying all its debts, we are entirely satisfied to accept as our share therein the said sum of thirty-five hundred dollars, and that we, nor either of us will ever hereafter make any further claim for other or further payment of any sum, whether to us or either of us, no matter what may be the value of the possessions of said society after payment of its debts. We also further acknowledge the cancellation and release without payment of any money thereon, of an account of said society, against Henry Stickel, dated March 10, 1893, amounting to $120.42, said cancellation and release of

said account being further consideration to us moving, in addition to said thirty-five hundred dollars; in consequence and in consideration whereof, we do each sign this instrument in writing.

JULIUS STICKEL, [SEAL]
PAULINE (X) STICKEL, [SEAL]
BERTHA GERATCH, [SEAL]

In presence of:
J. T. BROOKS.

EXHIBIT "H."

WHEREAS, The Harmony Society at Economy, Beaver County, State of Pennsylvania, is now indebted to various persons in large sums of money, payment of a part of which may be demanded at an early day; and

WHEREAS, The trustees of said society are advised that a suit is about to be brought against it in the name and on behalf of a large number of persons, who claim to be lawful heirs of certain deceased members of said society, the object of said suit being to compel the society to pay large sums of money to said persons as portions of the society's property claimed to be due to said persons as heirs of such deceased members, which claims we regard as totally unfounded; and

WHEREAS, It may become necessary for said trustees, in order that they may obtain money wherewith to pay the debts of the society, and otherwise properly protect its interests, either to borrow money and give securities for the payment thereof, or sell the lands of the society and thereby obtain cash for the payment of said indebtedness; and

WHEREAS, The trustees are advised by counsel that the lands of the society can be better managed, as well as made more available for the purposes of collateral securitity in case loans are to be effected, and in case of sale a more satisfactory title can be given to the purchaser if said lands should be first conveyed to an incorporated company, to be thereafter managed, sold and disposed of by and in the name of said incorporated company, and also avoiding thereby inconvenience and trouble that may arise from time to time by change of trustees, by death or otherwise;

Therefore, We the members of said Harmony Society, do each hereby express our consent with and request that John S. Duss and Gottlieb Riethmueller, the present trustees of said society, shall

forthwith sell, transfer and convey to the Union Company, a corporation duly created and organized under the laws of the State of Pennsylvania, all the lands, tenements and hereditaments situated in Allegheny and Beaver Counties, Pennsylvania, now owned and held by said trustees for the benefit of the said society, to the end that all said lands, tenements and hereditaments may be owned, held and managed by said incorporated company, and be sold and otherwise disposed of from time to time in pursuance of proper corporate action as may be determined by the directors and officers of said incorporated company.

The capital stock of said incorporated company, however, to be owned and held by the said trustees for the benefit of the society, in accordance with and on the terms and conditions of the articles of association of said society and the ratifications and modifications thereof, as the same now exists, to the extent of three hundred and ninety-seven thousand five hundred ($397,500) dollars, out of a total capital of four hundred thousand ($400,000) dollars.

WITNESS our hands and seals this 11th day of April, A. D. 1894.

JOHN S. DUSS, [SEAL]
GOTTLIEB RIETHMUELLER, [SEAL]
CONRAD HERMANSDOERFER, [SEAL]
FRANZ GILLMAN, [SEAL]
His
EDWARD X KELLERMAN, [SEAL]
Mark.
FREDERICKA MUNTZ, [SEAL]
Her
MARIA X DIEM, [SEAL]
Mark.
Her
DOROTHEA X HOEHR, [SEAL]
Mark.
REGINA LAUTENSCHLAGER, [SEAL]
LENA WOLFANGEL, [SEAL]
PHILIPINA L. WOLFANGEL, [SEAL]
CHRISTINA RALL, [SEAL]
KAROLINE MOLT, [SEAL]
KATRINA NAGEL, [SEAL]
Her
ELIZABETH X BECK, [SEAL]
Mark.
JOHANNA HERMANSDOERFER, [SEAL]
SUSIE C. DUSS. [SEAL]

COMMONWEALTH OF PENNSYLVANIA, } ss.
COUNTY OF BEAVER, }

On this 11th day of April, A. D. 1894, before me, a justice of the peace in and for said county, came the above named John S. Duss, Gottlieb Riethmueller, Conrad Hermansdoerfer, Franz Gillman, Edward Kellerman, Fredericka Muntz, Maria Diem, Dorothea Hoehr, Regina Lautenschlager, Lena Wolfangel, Philipina L. Wolfangel, Christina Rall, Barbara Boesch, Karoline Molt, Katrina Nagel, Elizabeth Beck, Johanna Hermansdoerfer and Susie C. Duss, and acknowledged the foregoing instrument to be their act and deed for the purposes therein set forth, and desired the same to be recorded as such.

And the said Johanna Hermansdoerfer and Susie C. Duss, being of full age, and by me examined separate and apart from their said husbands, and the contents of the said instrument being by me first fully made known to them, declared that they did voluntarily and of their own free will and accord, sign and seal, and as their act and deed, deliver the same, without any coercion or compulsion of their said husbands.

Witness my hand and seal the day and year aforesaid.

HENRY BREITENSTEIN, [SEAL]
Justice of the Peace.

EXHIBIT NO. 27.

APPLICATION OF UNION COMPANY FOR CHARTER.

To the Governor of the Commonwealth of Pennsylvania:

SIR:—In compliance with the requirements of an Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved the 29th day of April, A. D. 1874, and the several supplements thereto, the undersigned, all of whom are citizens of Pennsylvania, having associated themselves together for the purpose hereinafter specified, and desiring that they may be incorporated, and that letters patent may issue to them and their successors according to law, do hereby certify:

1st. The name of the proposed corporation is The Union Company.

2nd. Said corporation is formed for the purpose of the purchase and sale of real estate, or for holding, leasing and selling real estate.

3rd. The business of said corporation is to be transacted in

the borough of Beaver, in the County of Beaver, State of Pennsylvania.

4th. Said corporation is to exist for the term of one hundred years.

5th. The name and residence of the subscribers and the number of shares subscribed by each, are as follows:

Name.	Residence.	No. of Shares.
Henry Hice,	Beaver Borough, Pa.,	20 shares.
Richard R. Hice,	Borough of Beaver, Pa.	20 shares.
William S. Morrison,	Borough of Beaver Falls, Pa.	20 shares.
W. J. Stewart,	Borough of Bridgewater, Pa.	20 shares.
Agnew Hice,	Borough of Beaver, Pa.	20 shares.

6th The number of directors of said corporation is fixed at five, and the name and residences of the directors who are chosen directors for the first year are as follows:

Name.	Residence.
Henry Hice,	Borough of Beaver, Pa.
Richard R. Hice,	Borough of Beaver, Pa.,
William S. Morrison,	Borough of Beaver Falls, Pa.
W. J. Stewart,	Borough of Bridgewater, Pa.,
Agnew Hice,	Borough of Beaver, Pa.,

7th. The amount of the capital stock of said corporation is $5,000, divided into one hundred shares of the par value of $50 and $500 , being ten per centum of the capital stock, has been paid in cash to the treasurer of said corporation, whose name and residence is: Agnew Hice, Borough of Beaver, Beaver County, State of Pennsylvania.

HENRY HICE, [SEAL].
RICHARD R. HICE, [SEAL]
W. J. STEWART, [SEAL]
WILLIAM S. MORRISON, [SEAL]
AGNEW HICE. [SEAL]

STATE OF PENNSYLVANIA, } ss.
COUNTY OF BEAVER, }

Before me, the Recorder of Deeds, in and for the county aforesaid, personally came the above named Richard R. Hice, William S. Morrison and Agnew Hice, who in due form of law acknowledged the foregoing instrument to be their act and deed for the purposes therein specified.

Witness my hand and seal of office, the seventeenth day of January, A. D. 1894.

ORIN H. MATHEWS,
[SEAL] *Recorder.*

STATE OF PENNSYLVANIA, } ss.
COUNTY OF BEAVER, }

Personally appeared before me, this seventeenth day of January, A. D. 1894, Richard R. Hice, William S. Morrison and Agnew Hice, who being duly sworn, according to law, depose and say that the statements contained in the foregoing instrument are true.

RICHARD R. HICE,
WILLIAM S. MORRISON,
AGNEW HICE.

Sworn and subscribed before me
the day and year aforesaid.

ORIN H. MATHEWS,
[SEAL] *Recorder.*

STATE OF PENNSYLVANIA, } ss.
BEAVER COUNTY, }

Recorded in the office for recording deeds, etc., in and for said county in Charter Book No. 3, page 140.

Witness my hand and seal of said office this 16th day of February, A. D. 1894.

ORIN H. MATHEWS,
Recorder.
SEAL]

EXHIBIT NO. 28.

AUTHORIZATION OF INCREASE OF CAPITAL STOCK OF UNION COMPANY.

OFFICE OF THE UNION COMPANY.

BEAVER, PENNSYLVANIA, April 11th, 1894.

I hereby certify that the following resolution was adopted at a meeting of the Board of Directors of this Company, held on the fifth day of April, 1894.

Resolved, That a meeting of the stockholders be called to convene at the general office of the company on the fifth day of June, A. D. 1894, to take action on approval or disapproval of the proposed increase of the capital stock of said company from $5,000 to $400,000, and that the secretary be and is hereby directed to give notice thereof as required by law, unless the same be waived by the unanimous consent of the stockholders.

Attest: WILLIAM S. MORRISON,
Secretary.
[CORPORATE SEAL]

WAIVER OF SIXTY DAYS' NOTICE.

..... 1894.

The undersigned, stockholders in the Union Company, who are all the stockholders therein and holders of all the stock of said company to the amount set opposite our several names herein, to wit:

Name.	No. of Shares.
Richard R. Hice,	20
W. J. Stewart,	20
Harvey Hice,	20
Agnew Hice,	20
William S. Morrison,	20

do hereby waive the sixty days' notice of the meeting of the stockholders called for June 5th, 1894, required to be given by the seventh section of the sixteenth article of the Constitution of the State of Pennsylvania, and do hereby signify, by this paper our assent to the increase of the capital stock of said company from $5,000 to $400,000, and desire that the same may be taken as our vote in favor thereof, with like effect as if all the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved 29th April, 1874, relative to the increase of the capital stock, had been fully complied with.

STATE OF PENNSYLVANIA, }
COUNTY OF BEAVER, } *ss.*

I, William S. Morrison, secretary of the Union Company, being duly sworn, do depose and say that I am the secretary of the said company, that the stock ledger of said company is in my custody, and under my control, and that the list of stockholders given in the above waiver of notice of meeting to be held to vote for or against an increase of capital stock, is a complete list of such stockholders, and that they are the owners of the entire issue of the stock of said company, and that the signatures to said waiver are genuine and in the proper handwriting of the subscribers.

WILLIAM S. MORRISON.

Sworn and subscribed before me
this 11th day of April, 1894.
JAMES F. MERRIMAN,
[SEAL] *Notary Public.*

STATE OF PENNSYLVANIA, }
COUNTY OF BEAVER, } *ss.*

On this 11th day of April, A. D. 1894, personally appeared before me a Notary Public in and for the county aforesaid, R. R. Hice,

W. J. Stewart and William S. Morrison, stockholders, duly appointed judges, by the Board of Directors of the Union Company, to conduct an election of said company, to be held on the eleventh day of April, 1894, to approve or disapprove of an increase of capital stock of said company, who being duly sworn, or affirmed, do depose and say that they will well and truly, according to law, conduct said election to the best of their ability and true return make of the same.

RICHARD R. HICE,
W. J. STEWART,
WILLIAM S. MORRISON.
Judges.

Sworn or affirmed and subscribed before me, the day and year aforesaid.

JAMES F. MERRIMAN,
[SEAL] *Notary Public.*

We, the undersigned judges, appointed by the Board of Directors of The Union Company to conduct an election by the stockholders thereof, for or against an increase of the capital stock of the said company from $5,000 to $400,000, do hereby certify that, after being duly sworn, we held the said election at the office of the said company on the 11th day of April, 1894, the time and place fixed for holding the same, of which sixty days' previous notice by publication was duly waived, and in due form and manner we received the votes of the stockholders of the said company in favor of or against such increase. And at the said election there were voted in favor of the said increase one hundred (100) shares, and against said increase no shares, thereby evincing the consent of the said increase of all of the persons or bodies corporate holding the larger amount in value of the capital stock of the said company.

RICHARD R. HICE,
W. J. STEWART,
WILLIAM S. MORRISON,
Judges.

EXHIBIT NO. 29.

TREASURER'S RETURN OF INCREASE OF CAPITAL STOCK OF THE UNION COMPANY.

To the Hon. William F. Harrity, Secretary of the Commonwealth:

This is to certify that, by virtue of the consent of the stockholders of The Union Company, authorizing an increase of the capital stock thereof, from $5,000 to $400,000, given at an election duly

held for that purpose, on the 11th day of April, A. D. 1894, the capital stock of said company has been increased from $5,000 to $400,000, said additional stock ($395,000), being issued for real estate situate in Allegheny and Beaver Counties, Pennsylvania, which has been conveyed to the company.

JAS. DICKSON,
[SEAL] *Secretary and Treasurer.*

STATE OF PENNSYLVANIA, }
COUNTY OF ALLEGHENY, } *ss.*

James Dickson, above named, being duly sworn, says the facts set forth in the above certificate are true and correct.

JAS. DICKSON.

Sworn and subscribed before me
this 12th day of April, 1894.
JOHN D. MCCUNE,
[SEAL] *Notary Public.*
This return must be made either by president or treasurer.

SUPREME COURT OF THE UNITED STATES.

CHRISTIAN SCHWARTZ *et al.*, *Appellants*,
vs.
JOHN S. DUSS *et al.*, *Appellees.*
} No. 231 October Term, 1901.

ASSIGNMENTS OF ERROR ON APPEAL.

And now, on this 3rd day of February, 1902, came the appellants by George Shiras, 3rd, and S. Schoyer, Jr., their solicitors, and say that the decree dismissing the complaint in said cause is erroneous and against the just rights of the said appellants for the following reasons:

First. That the Court erred in affirming the decree of the Circuit Court of the United States for the Western District of Pennsylvania, which decree is as follows:

> "And now, this 13th day of February, 1899, upon
> "consideration it is ordered, adjudged and decreed that
> "the plaintiffs' bill be, and the same is hereby dismissed;
> "and it is further ordered, adjudged and decreed that the

"plaintiffs pay the costs, including the master's fees, to "be fixed, *sec. reg.* and which, together with his compensa- "tion as examiner, shall be paid to the master in the first "instance by the defendants.—BY THE COURT."

Second. That the Court erred in holding that the appellants were barred from maintaining their bill, and from the relief sought thereby, because the appellants had no claims on the property of the Harmony Society through any of their ancestors, and because if the appellants have such legal demands against the society, those demands have been barred by lapse of time.

Third. That the Court erred in holding that the Harmony Society is in full life, and that there had been no dissolution of the society by the common consent of the members or by their acts.

Fourth. That the Court erred in holding as follows:

"It is not necessary, nor would it be proper for the "Court to express any opinion as to what would be the "legal status and the ultimate disposition of the property "of the Harmony Society were its existence terminated "by the death of all its members, or were the dissolution "of the society otherwise effected. No such questions "are before us; we are not dealing with the assets of a "defunct or dissolved association."

Fifth. That the Court erred in not finding that by the agreement of 1836 all who were then members of the society, and who afterwards became members of the society, became owners in and to an equal undivided share of all the property of the said society, real and personal, which by the agreement of 1836 was converted into a joint and indivisible fund, and that, therefore, upon the event of the dissolution of the association from any cause whatever, in the absence of provisions in that agreement for the distribution of said fund, the said joint and indivisible fund is to be distributed among all persons dying in the society, and the legal heirs and representatives of those who died in the society.

Sixth. That the Court erred in refusing appellants' contention that the trusts created for the benefit of the Harmony Society violated the rule against perpetuities and is therefore void, and in consequence, in default of a remainder over, or other provision, the same reverts to the members of the society if living, and revert, as aforesaid, by way of resulting trust to the donors, or in the event of death to the heirs and legal representatives of those who died members of the society since 1836.

Seventh. That the Court erred in refusing appellants' contention that the Harmony Society, being unincorporated, and not organized for any religious, scientific, charitable or literary purpose,

is incapable of holding real and personal estates, directly or through trustees, for its benefit, and that the trusts created for the benefit of the said society are void and revert by way of resulting trust to the members of the society living, and to the heirs and legal representatives of those who have died members of the society since 1836.

Eighth. That the Court erred in refusing appellants' contention that the purposes and principles, mode of organization and government prescribed and contemplated by the various articles and constitutions of the society, are against public policy, and that the trusts created for the benefit of the said society are therefore void, and revert as aforesaid, by way of resulting trust, to the donors if living and to their heirs and representatives if dead.

Ninth. That the Court erred in refusing plaintiffs' contention that the constitution and agreements of the Harmony Society contemplated no end to the life of the society, and made no provision for such event, and the trusts provided no remainder over upon the death or dissolution of the society from any cause, or upon the failure of the trusts from any cause, and that the said trusts did not create a joint tenancy with right of survivorship in the members, but was an express trust for the society as a society.

Tenth. That the Court erred in holding as follows:

> "There has been no dissolution of the society, either "by the common consent of the members or by their acts. "The membership, indeed, has become greatly reduced, but "the rights of the society as now constituted are as sa- "cred in the eye of the law as they were when the mem- "bership was twenty-fold greater."

Eleventh. The Court erred in refusing to hold that numbers are an essential feature of the principle of communism, as established by the articles of association, and that the paucity of numbers of surviving members disabled the society for maintaining the principles for which the society was founded, or the mode of agreement provided for in the said articles of association.

Twelfth. The Court erred in refusing to hold that the partition of the assets and property of the society among the members just prior to the filing of plaintiffs' bill was not an act of liquidation and dissolution.

Thirteenth. The Court erred in finding that the conveyance to the Union Company did not work a dissolution of the society, and that the same did not wholly terminate the existence of said society, not only as to the government thereof by the Board of Elders and by the members, but also as to the ownership of any property.

Fourteenth. That the Court erred in refusing to appoint a receiver and decree the other reliefs prayed for in the bill.

Fifteenth. That the Court erred in imposing the costs of this case upon the plaintiffs who are admittedly the next of kin of ancestors dying in the society, and who sue as entitled to the trust estates of the society by way of resulting trust.

GEO. SHIRAS, 3RD,
S. SCHOYER, JR.,
Attorneys for Appellants.

SUPREME COURT OF THE UNITED STATES.

SCHWARTZ *et al.*, *vs.* DUSS *et al.* } No. 231. October Term, 1901.

The counsel for the appellants and appellees hereby stipulate with each other that the record to be printed in the appeal shall consist of the following:

Docket entries, bill, answers, master's report, opinion of Court on certified question and opinion of Court on exceptions to master's report, assignments or error, appeal to the United States Circuit Court of Appeals, opinion of the Court, all agreements, articles and constitutions of the society from 1805 to 1894, inclusive charter records of the Union Company, all releases or quit-claims of retiring members between 1890 and date of filing bill.

D. T. WATSON,
Attorney for Appellees.
GEO. SHIRAS, 3RD,
Attorney for Appellants.

February 14th, 1902.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1901.

CHRISTIAN SCHWARTZ, a citizen of the State of West Virginia, ANTHONY KOTERBA, DAVID STROHAKER and ALLEN SHALE, citizens of the State of Ohio, and G. L. SHALE, a citizen of South Dakota

vs.

JOHN S. DUSS, GOTTLIEB REITHMUELLER, FRANZ GILLMAN, CONRAD HERMANSDOERFEN, EDWARD KELLERMAN, JOHANNA HERMANSDOERFER, SUSIE C. DUSS, KAROLINE MOLT, KATRINA NAGEL, ELIZABETH BECK, MARIA DIEM, BARBARA BOEH, FREDERICKA MUNTZ, DOROTHEA HOEHR, ERGINA LAUTENSCHLAGER, CHRISTIAN RALL, HENRY HICE and JOHN REEVES, citizens of the State of Pennsylvania, and THE UNION COMPANY, a corporation citizen of the State of Pennsylvania.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners, Christian Schwartz, a citizen of the State of West Virginia, Anthony Koterba, David Strohaker and Allen Shale, citizens of the State of Ohio, and G. L. Shale, a citizen of South Dakota, respectfully represent as follows:

The questions involved in this cause are based to a large extent upon certain instruments of writing in evidence as follows, viz:

1st. George Rapp, and with him certain associates, left the Kingdom of Wertember about 1803, and acquired seven thousand acres of land in Butler County, Pennsylvania, and there established a town called Harmony.

The first of the written instruments referred to is dated February, 15, 1805, and was executed there. It is printed as "Exhibit A," page 17, and also in the Master's Report, page 128, Vol. 1, of the Record.

This instrument was one of adoption of new members. The community is described therein as "George Rapp and his associates."

2d. In the year 1814 "George Rapp and his associates" removed to Posey County, Indiana, and there established a town called Harmony; and in the year 1815 sold the Butler lands and town for $100,000.

Another instrument of adoption was entered into, dated January 21, 1821, in Indiana. It is "Exhibit B," printed on page 50, and in the Master's Report, p. 131, Vol. 1.

The parties therein are "George Rapp and his associates" of the second part, and others, subscribers, of the first part. It is called an "Agreement, treaty and alliance."

3d. In the year 1825 George Rapp and his associates acquired three thousand acres of land on the Ohio River, in Beaver County, Pennsylvania, about eighteen miles below the City of Pittsburgh, having a frontage of about three miles on the banks of the Ohio River, and there established the Town of Economy, laid out streets, built a "great house" for Rapp and a large number of substantial brick houses, cultivated farms, established vineyards, made wine,

erected woolen mills, flour mills, silk factory and other industries, to employ the labor of members and to support, maintain and clothe themselves.

The title to the lands was taken in (M. R. 142) the name of Frederick Rapp, who on July 20, 1825, executed a declaration of trust that all the property—real, personal and mixed—which was then or which might afterward come into his possession, was the property of the Society.

In this instrument the name "Harmonie Society" is for the first time used, in a descriptive and informal way.

These lands are highly and productively developed for oil and gas. The Trust Estate and property of the Society is not less than three millions of dollars.

4th. Another instrument dated March 9th, 1827, was executed at Economy, and is "Exhibit C," p. 52 (Vol. 1), and is printed in the Master's Report, p. 133, (Vol. 1.)

The preamble recites the formation of a community by George Rapp and many others; recites the purposes for its formation and its principles, and also the necessity existing that the condition of membership should be clearly understood, and that the rights and privileges and duties of every individual should be defined.

Thereupon, upon the one part, the signers, citizens of Beaver County, agree with "George Rapp and his associates" of the other part upon certain things therein mentioned.

5th. On the 31st day of October, 1836, a new contract or agreement was executed. It is "Exhibit D," p. 87, Master's Report 139, Vol. 1. The whole purpose of this instrument is to revoke the 6th article of the articles of March 9, 1827, providing for restitu-

tion of property severally contributed by them to retiring members and to substitute equality of ownership in the property of the Society so contributed and which might be subsequently acquired.

This system of restitution is denounced as a departure from the great principle of a community of goods; and by these articles of 1836, the owners of the right to restoration convey to themselves and to all subsequent members all the property of the Society—real, personal and mixed, and afterwards to be acquired, "now and forever," into joint and indivisible stock." In no other respect are the prior articles affected.

6th. In 1834 Frederick Rapp, the Trustee, died, and an instrument dated July 5, 1834, was executed, reciting his death and constituting George Rapp the general agent of the Society, and defining his powers and declaring his trust for the Society.

In pursuance of this instrument, George Rapp appointed R. L. Baker and Jacob Henrici general agents and trustees for the society.

This instrument is printed in the Master's Report, pp. 143-144-145, Vol. 1, and is "Exhibit No. 85."

7th. George Rapp died in 1847, and in consequence of his death an instrument was executed dated August 12, 1847, (Master's Report, p. 146, Exhibit 83; also as Exhibit 'E,' p. 61), expressly re-establishing the provisions of the articles of the 9th of March, 1827, and of 31st of October, 1836, and providing for a management of affairs by a board of nine elders and a board of two trustees,—all being named therein; the Board of Elders to be self-perpetuating; the trustees to be members of the Board of Elders. The trusts for the society are continued.

The society continued to be divided into two classes, viz: the governing board having all the power, and the general members deprived of any power or authority, and entitled only to maintenance.

8th. The next articles in point of date are those of April 30, 1890. ("Exhibit F," p. 67, Vol. 1.) They purport to be ratification of acts done by the elders and trustees, and re-affirm the articles of 1817.

9th. There are two additional articles of later date; the first is dated Dec., 1892, intending to give to the trustees power to borrow money. ("Exhibit G," p. 74, Master's Report, p. 437;) and the second is dated April 11, 1894, ("Exhibit 80," Master's Rep., 223, Vol. 1,) and intending to authorize sale of all the society property to the Union Company.

10th. The articles of 1805 bore the names of 750 subscribers; to the articles of 1827 there are 666 signatures (Master's Rep., 133); to those of 1836 there are 424 signatures (p. 139); to those of 1847 there are 288 signatures (p. 146); those of 1890, 45 signatures (p. 204); the articles of 1892, 33 signatures (p. 213); to the articles of 1894, 18, being all of the membership (p. 222).

11th. The bill in this cause names all the then members, sixteen in all; the record, Dec. 5, 1898, suggests the death of seven of those,—leaving then nine members, of whom one or more may have since died.

There being no men left in sufficient number to serve, four women were added to the Board of Elders.

Duss (Vol. 2, p. 293) gave the names of the Board of Elders:

Fredericka Muntz,
Regina Lautenslager,
Maria Deim,
Karolina Molt,
Susie C. Duss,
Franz Gillman,
Conrad Hermansdoerfer,
G. Reithmuller.
John S. Duss.

Of these Reithmuller, Hermansdoerfer, Maria Deim and Regina Lautenslager are dead.

This society is now so far voluntarily reduced in numbers as therefore to be incapable of fulfilling the purposes and principles of a communistic society and a patriarchal government, especially as all the members now living are required for governing, and there remain no members to be governed.

12th. Between the 8th of March, 1892, and June , 1892, Duss, the senior Trustee, purchased the interest of seventeen members of the society in the property of the society, paying therefor about five thousand dollars each out of the trust funds in his hands. The bills of sale (Ex. 10
recite the probable value of the assets and property of the society, and recites:

"I am entirely satisfied to accept as my full share and in-
"terest therein said (consideration), and I will never hereafter
"make any claim for any sum whatever, nor for the delivery
"of any other property of said society to me whatever, nor for

"the delivery of any other property of said society to me no "matter what may be the value of the property and assets of "said society after payment of its debts."

Of these seventeen eleven were admitted to membership in the year 1890, and the remainder, save one in the years 1892 and 1893. All were in the prime of life but one Frederick. Of the remaining membership—nine in number—Duss and his wife are about 36 years of age, and the others range from 50 years to 80 years of age. The only male member, Franz Gilliman, is an imbecile.

13th. On April 12th, 1894, the Trustees conveyed to the Union Company (a co-defendant), all its property in fee simple clear of the Trusts upon which they held it, including every acre of land, and every tenement, receiving in payment therefor its grossly inadequate capital stock of $400,000. This company is organized under the corporation laws of Pennsylvania, for the purpose of buying and selling real estate. The members of the society are tenants at will of the houses they occupy.

The Bill in this case was thereupon filed, as The Union Company had it in its power to dispose of all the property of the society apparently clear and freed from the Trusts, which are not expressed on the face of the deeds by which titles appear in the name of the Trustees.

Shortly after this conveyance was made Reithmuller the junior Trustee, died, and John S. Duss, the senior Trustee, is the sole Trustee.

14th. The Bill proceeds upon the theory that the Economy Society is non-existent, and that the Trusts have failed, and therefore the defendants are: the members surviving at the time the Bill was filed and the Union Company which has actual possession of the Trusts Estates and properties. The other defendants, Hice and Reeves, were brought in connection with other matters referred to in the Bill and to which it is not now material to make further reference.

QUESTIONS INVOLVED:

THE QUESTIONS INVOLVED IN THE CONSIDERATION OF THIS CAUSE, ARE BASED UPON THE FOLLOWING CONTENTIONS OF YOUR PETITIONERS:

1st. As the constitutions of the society do not provide a terminal period of life, nor contemplate its death, or make any provision for the distribution of the corpus of the Trust property in the event of its dissolution; and as the titles to the trust properties are in fee and absolute in the Trustees;

A. The last surviving member of the society is not entitled to take the Trust estates by reason of anything contained in those constitutions and Trusts, either as joint tenants with right of survivorship, or by way of tontine;

B. That the Trusts were created for the society as a society, and not for the members;

C. That upon dissolution of the society from any cause, and the consequent failure of the Trusts, the properties of the Trusts do not become bona vacantia, because the society is not an incorporated body;

D. That in the event of such dissolution and consequent failure of the Trust, the corpus of the Trust property must revert to

those who at any former time owned the property and were donors of the Trust properties, and to their heirs and legal representatives, by way of resulting Trust;

E. That the plaintiffs are in the class of reversioners, claiming through ancertors who were among the donors of the trust properties, and as their heirs and legal representatives.

II.
THAT THE SOCIETY HAS CEASED TO EXIST AS A SOCIETY.

A. Because the present members and their officers, no longer conform to the principles of the society, in maintaining a patriarchal form of government, with community of goods as adopted in the apostolic age, nor uphold celibacy and the non-sexual intercourse of married people who are members, nor practice or enforce the other doctrines for which the society was formed, and for the maintenance of which the said Trusts were established.

B. Because the government of the society has not kept up its membership by admission from time to time of new members; but that the present trustee has endeavored to reduce the membership to such limited numbers and such feebleness of remaining members, as to make him practically the sole owner and controller of the large fortune embodied in these Trusts subject only to the very slight disbursements necessary for the lodging, clothing and maintenance of seven old German peasants.

C. That the surviving Trustee, John S. Duss, has entered into a process of liquidation of the affairs of the society, and has partitioned part of its property with a view to his sole ownership of the

Trust property, by the purchase of interests of seventeen of its younger members, for sums averaging about $5,000 each, paying for the same out of the trust properties in his hands. This average payment is substantially a full share of each one of the property on the basis of values submitted to them by Duss.

D. That thereby he has so depleted the membership that there remain only nine persons, including himself and wife, of advanced years (except himself and wife), and the only male member left (except himself) is an imbecile; and that he is practically now the possessor of all the property of the society, which is of great value, burdened only by the support of a very few old peasant people; and with the consequent result that the surviving members are not sufficient in numbers to fill the Board of Elders and the Board of Trustees, as required by the constitution of 1847.

E. That the said Duss, who is now the surviving Trustee, in pursuance of his scheme of liquidation, and of relieving himself from the burdens of his Trusts, has caused to be organized a corporation for profit under the laws of Pennsylvania, known as the Union Company, and has conveyed to it in fee simple clear of trust, all of the Trust properties held by him, thus divesting the society of all its property, and delegating to a Board of Directors of a capitalistic corporation the functions, rights, powers and duties exclusively delegated to the Board of Elders and Board of Trustees, and diverting, as far as he is able, the ultimate destination of the Trust properties from the reversioners, under its deeds and constitutions, to the disposition and destination which the laws of Pennsylvania apply to the assets and properties of corporations for profit. And that the majority of the Board of Directors of the Union Company are non-members of the society.

That the Trusts are not disclosed by the deeds under which the Trustees hold the property of the society, but by other investments.

III.

Among the other questions involved are the following:

A. That the constitutions and form of government of the society are contrary to and in violation of public policy, and a trust for the support of such a society is illegal and void.

B. The society is an unincorporated communistic association not organized for a religious, charitable, literary or scientific purpose, and being such, is in capable of holding property itself directly or indirectly through trusts for its benefit.

C. That as neither the deeds, terms of the trust or the constitutions of the society, contemplate its dissolution at any future time, but do contemplate a never-ending existence, the trusts violate the rule against perpetuities.

Errors.

The petitioners respectfully represent to this Honorable Court, that the Circuit Court of Appeals has erred in holding:

1st. That where trusts of property have been created for the benefit and use of an unincorporated communistic society, not organized for any religious, charitable, scientific or literary purpose, and where the trust properties are held by the Trustees by separate conveyances not disclosing the Trusts, and in fee simple; and where no terminal period of the life of such association is provided for and no remainder over is created to take effect in the event of the death or dissolution of the society from any cause; or where there is a failure of the Trusts:

A. The grants are not determinable fees:

B. The property covered by the Trusts does not revert by way of resulting trust to the donors, if living, or to the heirs and legal representatives of those who are dead:

C. That such community is capable of holding real and personal property directly, or through trusts created for its use and benefit:

D. That such absolute conveyance in fee in trust for a society which by its constitution contemplates a never ending existence, does not transgress the rules against perpetuities.

2nd. That where such unincorporated community has been organized for the maintenance of principles and purposes, and under the form of government, hereinafter mentioned, such organization is not in contravention of public policy, and trusts created for its benefit, use and support, are not void: The said purposes, principles, and mode of government being in brief as follows, viz:

Purposes and Principles.

A. Community of goods:

The society is formed "upon the basis of christian fellowship, the principles of which being faithfully derived from the sacred scriptures, *includes the government of the Patriarchal age, united to the community of property adopted in the days of the apostles.* * "

B. Celibacy, and the non-sexual intercourse of married members.

C. The concretion of all separate properties of individual members into the single ownership of the Society.

D. Unpaid labor of members for their lives, the accretions of which pass to the ownership of the Society.

Mode of Government.

A. A patriarchy, consisting (until 1847) of George Rapp as the Patriarch.

B. The division of the status of members into two classes, viz.:

(a) The Patriarch, who held, possessed and disbursed the Trust properties, without control or account, and had and exercised absolute power to make laws and regulations, and enforce the same by expulsion, remonstrance or other discipline.

(b) The members as such had no voice or vote; their duties are:

To submit faithfully to the laws and regulations; to manifest cheerful and ready obedience; to labor with the hands of themselves and their families; to give to the Patriarchy all their individual lands, goods, money and chattels.

Their only rights are:

To be present at every religious meeting; to receive such instruction in church and school as may be reasonably required for their temporal good and for their eternal felicity;

To receive the necessaries of life, such as clothing, meat, lodging in health and strength, and in sickness and infirmity.

C. These purposes, principles and mode of government continued until the death of George Rapp, when the powers which he had possessed and exercised were vested in a dual patriarchy, the purposes and principles of the Society remaining unchanged. This duality consisted of a Board of Elders of nine members who are named in the articles; two of whom constituted a Board of Trustees.

The powers of the Board of Elders are:

(a) Exclusive regulation of internal affairs, appointing and removing of Superintendents, and to see that members perform their assigned duties;

(b) To determine all disputes and misunderstandings; to admit new members and to expel; to make rules, laws and regulations; to appoint spiritual leaders.

(c) To remove members of its own board and of the Board of Trustees:

(d) To fill all vacancies in either Board in the future:

The Board of Trustees take all titles in trust, and exercise all their powers without accounting, and have exclusive charge of all external affairs, and the management and control of the Trust properties, and of all disbursements.

The members have no right of voice or vote in the nomination or election of either board, or in filling vacancies therein; possess no control in any manner over the assets of the society, or of the disbursements; and their rights and duties remain the same without change or enlargement as they existed prior to the articles of 1847.

Under the laws of Pennsylvania this community could not be incorporated to maintain its purposes and principles, nor exercise its mode of government.

3rd. The Court erred in holding that the petitioners cannot maintain their Bill against individuals in whose possession are the Trust properties and assets which were of the society, based upon the facts that the life of the society had ended and the purposes for which the trusts were created had terminated, and that the trusts had failed; and that the properties of said trust therefore reverted by way

of resulting trust to the donors living, and to the heirs and representatives of those dead, among whom the petitioners admittedly are, because:

Petitioners could not, under the articles of 1847, maintain separate individual actions against the society as a going or existing society to recover specific contributions of their respective ancestors out of a valid and existing trust.

4th. The Court, while admitting that the trusts recited in the bill had been created for the society *as a society*, fails to pass upon the questions whether the trusts, so created, constituted a joint tenancy with right of survivorship or a system of tontine, or in the event of a dissolution of the society by common consent or otherwise, what the ultimate destination of the trust property will be.

The Court further erred:

5th. In holding that the petitioners cannot maintain their bill, because the society is not dissolved for the reasons:

(a) That such dissolution requires the common consent of the few remaining members, and no such consent has been shown.

(b) That the following facts do not work a dissolution of the community:

(1) The failure to keep up the society in numbers by the admission of new members;

(2) The partition of the trust funds yielded to seventeen members of the society whose expectancy of life was excellent, for the purchase of their interests in the property of the society.

(3) The reduction of membership so that there does not remain a sufficient number to fill the Board of Elders (which it is required shall consist of nine members) except by a violation of the laws and usages of the community in the selection of women to fill the enforced vacancies in the Board of Elders.

(4) The concentration of the power of the Board of Trustees into the hands of John S. Duss as sole trustee.

(5) The entire absence of a membership for the governors to govern.

(6) The creation of a corporation known as the Union Company, organized under the laws of Pennsylvania for profit, authorized to buy and sell real estate, and the conveyance to said corporation of all the trust properties of the society in exchange for its capital stock, the members of the society being tenants at will of said corporation, thus disabling the trustees from control of the *corpus* of the trust as confided to them.

(7) The abandonment of the doctrine of community of goods, and the concentration of the actual use, enjoyment and control of its members' wealth in one man, John S. Duss, subject only to the slight charge and expense of maintaining seven German peasants of the laboring class, in lodging, food, clothing and medicine.

(8) The abandonment of the principles of celibacy.

6th. The Court further erred in holding that the trustees were competent under the trusts as declared, to convert the *corpus* of the trust property by conveyance to the Union Company, and thereby defeat the reversion of the property of the Trusts in due lawful course upon the failure of the trusts, and substitute therefor the destination which the laws of Pennsylvania provide in cases of the dissolution of corporations for the distribution of its property; and in the meanwhile subjecting the *corpus* of the trust properties

to the burden of corporate taxes, liability for debts of the corporation, and the hazards of the corporate business.

And in failing to hold that if such conveyance were lawful, it worked a dissolution of the Society, and if not lawful, it was such waste as demanded the appointment of a receiver.

7th. In failing and refusing to consider and pass upon those provisions of the constitutions of the Society, which, petitioners claim, recognize as donors of the trust properties (among others) the ancestors under whom petitioners claim, and to whom the trust properties revert upon the failure of the trusts.

8th. In holding that the facts fail to disclose that the said Duss, with others, have entered into a combination to terminate the life of the Society, to liquidate its affairs, and to take to himself as sole surviving member, by way of survivorship, all the estates and properties of the Society.

Additional Reasons for the Allowance of the Writ.

The petitioners respectfully represent to the Court the following additional reasons why the writ of *certiorari* prayed for should be allowed:

First. The values of the properties involved in this cause aggregate, as they are informed and believe, the sum of at least $3,000,000.

Second. Many of the persons who will be interested in the distribution of the assets and property which were of the society, live in several judicial circuits of the United States, and some of the trust properties are situated in other judicial circuits other than the Third Judicial Circuit, so that the decree in this cause (if not reversed) will not preclude other and, perhaps, different decrees in other courts.

Third. The questions involved in this case affect the general status of many similar unincorporated communistic associations throughout the United States, as respects questions of public policy, the right to hold property directly or indirectly through trustees, as to the character, extent and duration of trusts created; and as to reversionary rights upon the failure of the trusts.

Fourth. That the purposes and principles and mode of government of the Harmony Society have been before this Honorable Court in several causes and before the Supreme Court of the State of Pennsylvania, but in them the consideration of the contentions arising in this cause either did not arise, or was defeated by questions of laches, release or failure of the pleadings to properly present them for adjudication.

No other case than this has been presented to any court which involve:

1st. The dissolution of the society, and the failure of the trusts created for its benefit, for the various causes hereinbefore mentioned.

2nd. The rights of reversioners by way of resulting trust to the properties in distribution.

The prior cases are fully presented in the brief of counsel accompanying this petition.

Fifth. In the event the life of the society has ended and that therefore the trusts have failed, the petitioners and those who stand with them are without any adequate protection against the acts of the Union Company in the selling or incumbering or waste of the property of the trusts, which it holds by conveyance without notice to purchasers.

Wherefore your petitioners respectfully pray that a *writ of certiorari* may be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Third Circuit, commanding that Court to certify and send to this Court, on a day certain, to be therein designated, a full true and complete transcript of the record and of all proceedings of the said Circuit Court of Appeals in the said cause therein, entitled Christian Schwartz, a citizen of the State of West Virginia, Anthony Koterba, David Strokaker and Allen Shale, citizens of the State of Ohio, and G. L. Shale, a citizen of South Dakota, against John S. Duss, Gottlieb Riethmueller, Franz Gillman, Conrad Hermansdoerfer, Edward Kellerman, Johanna Hermansdoerfer, Susie G. Duss, Karoline Molt, Katrina Nagel, Elizabeth Beck, Maria Diem, Barbara Boeh, Fredericka Muntz, Dorothea Hoehr, Regina Lautenschlager, Christian Rall, Henry Hice and John Reeves, citizens of the State of Pennsylvania, and The Union Company, a corporation citizen of the State of Pennsylvania, to the end that said cause may be reviewed and determined by this Court, as provided in Section 6, of the Act of Congress, entitled, "An Act to establish Circuit Court of Appeals, and to define and to regulate, in certain cases, the jurisdiction of the Courts

of the United States, and for other purposes," approved March 3, 1891 (26 Stat. 826, ch. 517) and that your petitioner may have such other or further relief or remedy in the premises as to this Court may seem appropriate and in conformity with the said Act, and that the said decree of the said the United States Circuit Court of Appeals in the said case, and every part thereof, may be reversed by this Honorable Court,

And your petitioners will ever pray.

CHRISTIAN SCHWARTZ,
ANTHONY KOTERBA,
DAVID STROHAKER,
ALLEN SHALE,
G. L. SHALE,

By

SHIRAS & DICKEY,
S. SCHOYER, JR.,
J. J. MILLER,
S. B. SCHOYER,
Att'ys, for Petitioners.

IN THE

Supreme Court of the United States.

No. OCTOBER TERM, 1901.

CHRISTIAN SCHWARTZ, a citizen of the State of West Virginia, ANTHONY KOTERBA, DAVID STROHAKER and ALLEN SHALE, citizens of the State of Ohio, and G. L. SHALE, a citizen of South Dakota

vs.

JOHN S. DUSS, GOTTLIEB REITHMUELLER, FRANZ GILLMAN, CONRAD HERMANSDOERFER, EDWARD KELLERMAN, JOHANNA HERMANSDOERFER, SUSIE C. DUSS, KAROLINE MOLT, KATRINA NAGEL, ELIZABETH BECK, MARIA DIEM, BARBARA BOECH, FREDERICKA MUNZ, DOROTHEA HOEHR, REGINA LAUTENSCHLAGER, CHRISTIAN RALL, HENRY HICE and JOHN REEVES, citizens of the State of Pennsylvania, and THE UNION COMPANY, a corporation citizen of the State of Pennsylvania.

Brief of Argument for Petitioners.

A full history of the Harmony Society as it was originally constituted, and as it has always remained until its dissolution, is given in the printed argument for plaintiffs before the Circuit Court of Appeals. A copy of that argument is filed with the petition, and we beg to refer the attention of the Court to it should the present brief fail to give needed information.

I.

Statement.

The Harmony Society, as it in later years is designated, was known as "GEORGE RAPP AND HIS ASSOCIATES" from the year 1805—when the first articles so far as is known, were executed—until the year 1836.

Who George Rapp's associates were is undisclosed by any of the records of the Society. It is almost a certainty, however, that he had no "associates," for from the beginning until his death in 1847, he was the absolute and exclusive ruler, patriarch and lawgiver; and had the absolute and exclusive control of all its wealth, and of its internal and external affairs.

The scheme of Society conceived by George Rapp was an association with "community of goods as adopted in the days of the Apostles," with the government of the Patriarchal age, as cardinal principles. New members were to be admitted by "adoption." All additions to the Society have been by "adoption." All the power vested in and remained in the Patriarch; all the subjection and no power, voice or vote constituted the portion of "adopted" members.

Every member upon adoption executed conveyance of his real estate, and surrendered possession of his personal wealth to "George Rapp and his associates" until 1836, and afterwards to the Harmony Society, for the use and benefit of the community; and every "adopted" member entered into written articles of adoption.

Each "adopted" member thereby bound himself in writing to give ready and cheerful obedience to all the laws and regulations as well as to the commands of superintendants, and to labor with his hands and those of his family.

In consideration whereof, the contracting member was formally adopted as a member of the community; and was to receive instruction in church and school and his lodging, meat, drink, clothing, &c., and medicines, so long as he remained in membership.

Until the execution of the articles of 1836, the "adopted" members, upon withdrawal from the community. were entitled to a return of tbe value of their lands, money, goods and chattels, severally contributed to the Society, without interest. in three annual gales, the profits of their labor were, however, unrecoverable.

The religious beliefs taught were the nearness of the millenium; the second advent of Christ; the duality of sex in man before the fall, and the ultimate restoration to man of that duality.

The doctrine of celibacy, and the non-sexual intercourse of married members, was also taught and strictly enforced. It was a necessary policy for the preservation of the doctrine of community of goods; otherwise the property of the community would be exposed to depletion by deaths of members, and the operation of laws of inheritance.

The community was unincorporated, and had for its object no charitable, religious, scientific or literary purpose in the legal sense.

The several articles of adoption until that of 1836, bear date as follows, viz: February 15, 1805, ("Exhibit A" Record Vol. 1, p: 47); January 20, 1821, ("Exhibit B" *Id.*, p. 50); March 9th, 1827, ("Exhibit C" *Id.*, p. 52.)

As the articles preceding those of 1827, are substantially in accord with those of the latter year, and as the latter contains a fuller recitation of purposes than the preceding ones, we print the articles of 1827 in full (Record Vol. 1, Exhibit "C" p. 52).

Articles of 1827.

"Whereas, By the favor of Divine Providence, an associa-
"tion, or community, has been formed by George Rapp and
"many others, upon the basis of Christian Fellowship, the prin-
"ciples of which being faithfully derived from the sacred scrip-

"tures, include the government of the patriarchal age, united "to the community of property adopted in the days of the "apostles, and wherein the single object sought is to approxi- "mate. so far as human imperfection may allow, to the fulfill- "ment of the will of God, by the exercise of those affections, "and the practice of those virtues which are essential to the "happiness of man in time and throughout eternity:

"And Whereas, It is necessary to the good order and "well being of said association that the condition of membership "should be clearly understood, and that the rights, and privi- "leges, and duties of every innividual therein should be so "defined as to prevent mistake or disappointment on the one "hand, and contention or disagreement on the other.

"Therefore. Be it known to all whom it may concern: "That we, the undersigned citizens of Beaver County, in the "Commonwealth of Pennsylvania, do severally and distinctly, "each for himself, covenant, grant, and agree to, and with the "said George Rapp, and his associates, as follows, to wit:

"Article 1. We the undersigned, for ourselves, our heirs, "executors and administrators, do hereby give, grant, and for- "ever convey, to the said George Rapp and his associates, and "their heirs and assigns, all our property, real, personal and "mixed, whether it be lands and tenments, goods and chattels, "money or debts due us, jointly or severally, in possession, or "in remainder, or in revision, or in expectancy, whatsoever or "wheresoever, without evasion or qualification, or reserve, as a "free gift or donation, for the benefit and use of the said asso- "tion or community; and we do hereby bind ourselves, our "heirs, executors and administrators, to all such other acts "as may be necessary to vest a perfect title to the same in the "said association, and to place the said property at the full "disposal of the Superintendents of the said community with- "out delay.

"Article 2. We do further covenant and agree to and with "the said George Rapp, and his associates, that we will sev- "erally submit faithfully to the laws and regulations of the "said community, and will at all times manifest a cheerful and "ready obedience toward those who are or may be appointed as "Superintendents thereof, holding ourselves bound to promote "the interests and welfare of the said community, not only by

"the labor of our own hands, but also that of our children, or "families who now are or hereafter may be under our control.

"Article 3. If, contrary to our expectations, it should so "happen that we could not render the faithful obedience afore- "said, and should be induced, from that or any other cause to "withdraw from the said association, then and in such case, we "do expressly covenant and agree to and with the said George "Rapp, and his associates, that we will never claim or demand, "either for ourselves, our children, or for any one belonging to "us directly or indirectly, any compensation, wages or reward "whatever, for our or their labor or services rendered to the "said community, or to any member thereof; but whatever we "or our families jointly or severally shall or may do, all shall be "held and considered as a voluntary service for our brethren.

"Article 4. In consideration of the premises, the said "George Rapp, and his associates, do by these presents, adopt "the undersigned, jointly and severally, as members of the "said community, whereby each of them obtains the privilege "of being present at every religious meeting, and of receiving, "not only for themselves, but also for their children and fam- "ilies, all such instructions in church and school as may be rea- "sonably required, both for their temporal good and for their "eternal felicity.

"Article 5. The said George Rapp, and his associates, "further agree to supply the undersigned severally with all "the necessaries of life, as clothing, meat, drink, lodging, &c., "for themselves and their familes; and this provision is not "only limited to their days of health and strength, but when "any of them shall become sick, infirm, or otherwise unfit for "labor, together with such medicine, care and attendance and "consolation as their situation may reasonably demand. And "if at any time after they have become members of the associ- "ation, the father or mother of a family should die or be other- "wise separated from the community, and shall leave their "family behind, such family shall not be left orphans or desti- "tute, but shall partake of the same rights or maintenance as "before, so long as they remain in the association, as well in "sickness as in health, and to such extent as their circum- "stances may require.

"Article 6. And if it should happen as above mentioned, "that any of the undersigned should violate his or her agree- "ment, and would not or could not submit to the laws and regu- "lations of the church or community, and for that or any other "reason, should withdraw from the association, then the said "George Rapp, and his associates, agree to refund to him or "them the value of all such property, without interest, as he or "they may have brought into the community in compliance "with the first article of this agreement, and the said value to "be refunded in one, two or three annual installments, as the "said George Rapp and his associates shall determine. And if "the person or persons so withdrawing themselves were poor, "and brought nothing into the community, yet if they depart "openly and regularly, shall receive a donation in money, ac- "cording to the length of their stay, and to their conduct, and "to such an amount as their necessities may require, in the "judgment of the superintendents of the association.

"In witness whereof and in testimony that the undersigned "have become members of the said community, upon the con- "ditions aforesaid, they have hereunto severally and each for "himself set their hands and seals, on the 9th day of March, in the year, 1827."

From the beginning until the year of his death—1834—all titles to real and personal estates were held in fee and absolutely by Frederick Rapp. No Trust was declared by him until the 20th of July, 1825; on that date he declared under his hand and seal:

"that all property, real, personal and mixed, which then was, "or hereafter might be in his possesion or enjoyment, or the "title to which he then held or might hereafter hold was and "should be considered the property of the Society, in which "he, the said Frederick, had no absolute interest whatever."

The subsequent documentary history of the community (referring hereafter to the articles of 1836 as the foundation of petitioners' right of action) is briefly as follows, viz:

Articles of July 5th, 1834.

Printed in Record, vol. 1, pp. 142 *et seq.*

Frederick Rapp, the Trustee, died in 1834. These articles nominated and appointed George Rapp, as his successor in the Trust. The powers conferred on George Rapp, are as follows, viz:

"1. To ask for, demand and receive from each and every "bank or other incorporated company, partnership, or individ- "ual person or persons, the amount which may be due there- "from, in the way of principal, interest or dividend, to the "said Harmonie Society, or to Fred'k Rapp, whether the same "be evidenced by judgment, mortgage, bond, certificate of "stock, note, bill of exchange, deposit of money, book account, "verbal promise, sale or barter, loan of money, or a rise in any "other manner whatsoever; the check, order, receipt, acquit- "tance or release of the said George Rapp to be as effectual as "if executed by all and each of us, or as if it had been execu- "ted by the said Frederick Rapp in his life time.

"2. To execute and receive all deeds and conveyances, in "fee simple or otherwise, on behalf of the society, whether "the title thereto stand in the name of the society, or of Fred- "erick Rapp, or of George Rapp and associates. The act of "the said George Rapp relative thereto to be as valid and suf- "ficient as if executed by us or by the said Frederick Rapp in "his life time.

"3. To carry on, by himself or through the agents whom "he is hereinafter authorized to appoint, all the dealings and "traffic of said society of every description.

"4. To constitute and appoint an agent or agents under "him as he may deem advisable, imparting to such substitute "or substitutes, should he think fit, the whole or any portion

"of the authority hereby conferred on himself. He may also, "at his pleasure, revoke such instrument of substitution when- "ever he may think such revocation called for by the interests "of the society.

"5. It is distinctly understood that in accepting and "acting under this power the said George Rapp disclaims all "personal interest, other than that of a member of said society, "in the present resources or future earnings of the society, in "conformity with the principles and terms upon which the "Harmonie Society was originally founded, as fully and effec- "tually as was done by the late Frederick Rapp in the instru- "ment already averted to, dated 20th July, 1825, the terms of "which instrument the said George Rapp hereby adopts for "himself, and repeats in every particular."

In pursuance of this power George Rapp appointed R. L. Baker and Jacob Henrici to act in his stead, and imposed upon them the Trusts which had been imposed upon him.

Articles of October 31, 1836.

These articles are printed as "Exhibit D," Record Vol. 1, pp. 57, et seq.

The articles of 1827, which we have already quoted in full, are ratified and confirmed with the exception of Article 6th of that document, relating to restoration of specific contributions of property to withdrawing members. The 6th article is annulled, for the alleged reason that it manifestly departed from the great principle of community of goods, and tended to foster a feeling of inequality

As these articles have a very important bearing upon plaintiffs' rights, we will later on in this brief more fully refer to them.

Articles of August 14, 1847.

Printed as "Exhibit E," (Record Vol. 1 pp. 61, et seq.)

George Rapp, the Patriarch had died in that year. These articles vested all the powers of the Patriarchy in a Board of Elders, consisting of nine members, therein named, and in a Board of Trustees, composed of two members of the Board, therein named.

The Board of Elders were vested with the exclusive control of internal affairs, and the Board of Trustees, succeeding to the Trusts designated in the appointment of George Rapp, had exclusive control of external affairs. The Board of Elders was self perpetuating, with power to fill all vacancies in either Board.

The lay members had no voice or vote in the election or nomination of these Boards, no power to compel accounts. Their rights remained limited as by the prior articles, to mere subsistence; and their duties of labor continued. The articles of 1836 and of 1827 are re-affirmed.

Articles of April 30, 1890.

These are printed on pages 67 *et seq*, Record Vol. 1 as "Exhibit F."

These articles ratify and confirm the articles of 1847; recites the death of one of the Trustees and ratifies and confirms the appointment of Ernest Woelfel as co-trustee in succession to Jonathan Lenz, deceased; and recognizes as the existing Board of Trustees, Jacob Henrici and Ernest Woelfel.

Articles of December 22, 1892.

These are printed in the Record Vol. 1, p. 74, as "Exhibit G." They confirm the articles of 1847 and of 1890; name the existing members (then thirty-five in number) and declared the names

of the Board of Elders to be, viz: Jacob Henrici, John S. Duss, Johannes Scheid, Gotfried Lauppe, Moritz J. Fredericks, Jacob Niclaus, Conrad Hermansdoerfer, Hugo Miller and Gotlieb Reuxhmiller; and of the Board of Trustees—Jacob Henrici and John S. Duss. All of these, except Duss, are either dead, or their interests in the property have been purchased by Duss.

The object of these articles was to enlarge the powers of the Trustees to enable them to borrow money on mortgage. Father Henrici at this date was ninety years of age, and had for months been in a very feeble and sickly condition. Two days after the date of these articles he died.

Articles of April 11, 1894.

These are printed as "Exhibit H," Record, Vol. 1, pp. 112, *et seq.* They purport to be signed by eighteen persons; of those nine only, including Duss and his wife, are living—of the remainder all are women but one.

The object of these articles was to authorize the Trustees to sell all the lands and tenements of the society in Allegheny County and Beaver County, Pennsylvania, to the Union Company, for the consideration of $397,500, payable in its capital stock shares.

In none of the articles is a termination of the life of the society contemplated or provided for. While the property of the society was always bound in the hands of the Trustees by acknowledged trusts for the use and benefit of the society, the title deeds were in fee simple in the names of the Trustees, without expression of the Trusts.

II.

Membership.

The progress of the community in its adopted membership was for many years successful. The adopted members signing the articles of 1805, numbered 750 persons; those of 1827 bore the signatures of 666 persons (Vol. 1, p, 133); those of 1836 bore the signatures of 424 (Vol. 1, p. 139).

From this date the membership began to decline. The articles of 1847 have only 288 signatures (Id. 146); those of 1890. only 45 members (Id. 204); those of 1892, thirty-three signatures (Id. 213); and those of 1894 only eighteen signatures (Id. p. 222).

Of these eighteen all but nine are dead or have been bought out; two of the nine are John S. Duss and his wife. All the remaining ones are old peasant women, except one, Franz Gilman, and he is old, feeble and weak of intellect.

The Trust Properties.

The progress of the wealth of the community is more marked. In 1805, it owned 7,000 acres of land in Butler County, Pennsylvania; in 1815, it sold those lands, and purchased 10,000 acres of land in Posey County, Indiana; in 1825, it disposed of most of their lands there, and bought 3,000 acres of land in Beaver County, Pennsylvania, and established the town of Harmony. By its system of unpaid labor it developed many industries, and became possessed reputedly of great wealth.

Through bad management many losses were incurred; but the Beaver County lands, only 18 miles below Pittsburgh, closely surrounded by populous suburbs, with a frontage on the Ohio river of three miles, with a substantial town of several hundred brick houses, churches, mills, vineyards and productive oil and gas developments, are now worth four millions of dollars.

The following conclusions necessarily follow from the consideration of the articles cited.

A. All the real estate, monies, goods, chattels, and accretions are subjected to Trusts for the use and benefit of the community, and such trusts are express trusts:

B. All of the property was held in the names of the individuals who from time to time were acting as Trustees, but without designation of character as Trustees, or expression of Trust. The deeds were in fee simple, the possession of the other properties absolute.

C. The constitutions and agreements contemplated no end to the life of the society, and made no provision for such event; and the Trusts provided no remainder over upon the death or dissolution of the society from any cause, or upon the failure of the Trusts.

D. The Trusts were created for the Society AS A SOCIETY, and not for members as such; and did not create a joint tenancy with right of survivorship.

E. The community is unincorporated, and was organized for no charitable, religious, literary or scientific purpose in the legal sense.

F. The purposes and principles, and mode of government prescribed and practiced are against the policy of the law, viz:

In the establishment of a mode of government not recognized by the laws of Pennsylvania; in a system to absorb into the society all the individual wealth of members and profits of their unpaid labor, as well as all accretions for an unlimited period of time; in establishing a dominant and governing class in whom vests the use, enjoyment and disbursement of the wealth, and the social and civil control of lay members by undefined laws and regulations; and a subject class composed of the ordinary members, whose sole interest is a charge on the property of the society for lodging, food, clothing, drink, medicines, etc., whose duty was to labor without compensation, and who possess no voice or vote in the selection of the governing body, or in the formation of laws and regulations, or enforcement of discipline; and with no right to demand an accounting for the property, use and application of the trust properties:

The doctrine of community of goods; the form of patriarchal government, and the establishment and enforcement of the doctrine of celibacy and the non-sexual intercourse of married members.

The petitioners contended that in these circumstances the trusts were void, and the property covered by the trusts necessarily reverted to the donors of the trust properties, if living, and to the heirs and representatives of those who died members of the Society.

The Circuit Court of Appeals merely adopted the opinion of the lower Court in its opinion, without discussion of these questions. The opinion of Judge Acheson, of the lower Court, adopted the findings of the Master without discussion; and the Master found as matter of law,

that the Society did not in its purposes and principles offend against public policy; that this unincorporated Society was capable of holding property directly or indirectly through Trustees; that the rule against perpetuities was not violated, and that the trusts were valid trusts.

As respects the Master's findings upon the question of the rule against perpetuities: he bases his opinion upon the fact that as the titles to the trust properties were absolute in the trustees, there was a power of sale in the trustees, and that therefore there was no perpetuity. He, therefore, overlooked the vital fact that the proceeds of such sales are to be held upon the same trusts as were the properties sold. The power of sale given to the trustees was not given to *terminate* the trust, but to *continue* it. It is not a power of sale but the period of distribution which decides whether a perpetuity has been created. The suspension of the power to alienate the subject of a trust is not relieved against by a power to

exchange for other property to be held on the same trust, or to sell it and re-invest the proceeds to be held on the same trust.

We refer to the following clause of the article of August 12th, 1847 (Record Vol. 1, p. 149).

The third clause of article 5th provides:

> "The said trustees shall have power jointly to purchase "real estate in their own names, and also in their joint names "to grant, bargain, sell or convey all or any of the lands or "tenements now or hereafter owned by or belonging to the "said society, and for this purpose to execute deeds of con- "veyance in fee simple or otherwise in their joint names, *but "the proceeds of all such sales shall be held in trust for the "society.*"

Article 6th of the same agreement expressly declares:

> "That all the property, real, personal and mixed, which "*now or hereafter* shall be held or acquired shall be "deemed the common property of said Society * * * * "according to the articles of association re-established and "continued and according to the present agreement."

The authorities bearing upon the question of the rule against perpetuities appear in our printed argument filed in the Circuit Court of Appeals on p. 95 to 111, inclusive.

It is respectfully submitted that the Master erred, and that the petitioners have not had the advantage of full consideration of these questions by either the Circuit Court or by the Circuit Court of Appeals.

III.

The petitioners also asserted that if, notwithstanding these contentions, the trusts were valid for the Society as a Society, yet the life of the Society had terminated and therefore the trust property reverted to the donors and their heirs and representatives.

The Master *further* found that the society had not by *mutual consent* been dissolved, and therefore continued to be a society. His findings in this respect are sustained by the lower Court by a general expression of affirmance, without review. Judge Acheson further said as follows, viz:

> **"It is not necessary nor would it be proper for the Court "to express any opinion as to what would be the legal status "and the ultimate disposition of the property of the Har- "mony Society were its existence terminated by the death of "all its members, or were a dissolution otherwise effected. "No such questions are before us--we are not dealing with "the assets of a defunct and dissolved association."**

The Circuit Court of Appeals adopts the opinion of Judge Acheson as its own in this respect.

It therefore follows, from the decisions, that trusts exist, and exist for the benefit and use of the community as a society, excluding individual rights of members and rights of survivorship; that the circumstances of undisputed fact do not constitute a dissolution of the society in law, and that such dissolution could be the result only of the consent of the members themselves.

The terms of the constitutions of the society gave to members no power as members to formally dissolve the society.

If the contentions of the plaintiffs be correct, the underlying question of the ultimate destination of the property remains undisposed of.

Acts of Dissolution.

The undisputed facts bearing upon the dissolution of the Society and the failure of the Trusts, date principally from January, 1890.

In the month of January three members of the Board of Elders died, and among them was one of the members of the Board of Trustees—Jonathan Lenz. The Board of Elders, in accordance with the power given them by the articles of 1847, filled the vacancies by the election of John S. Duss and two others, Nicklaus and Fishern as Elders. The three men were admitted to membership and to the Eldership on the same day—an unprecedented occurrence.

Duss was a young man with no pecuniary means; had been for years drifting through the West in desultory engagements, and shortly prior to the date of which we are speaking, was employed as a teacher for the Society. Mr. Henrici, the senior Trustee, was then eighty-eight years of age, feeble in body and with little remaining vigor of mind.

On February 13th, 1890, sixteen new members were admitted, among them the wife of John S. Duss. About July 1, 1890, the new Junior Trustee died—Ernest Woelfel by name, and Duss was chosen Junior Trustee in his stead by the Board of Elders.

On December 25, 1892, Father Henrici, the Senior Trustee, died, and Duss was chosen his successor by the Board of Elders—the Board of Trustees then consisting of Duss and Samuel Siber, the town constable.

Duss at that time was about thirty years of age, with a vigorous constitution, and with a splendid expectation of life.

The members of the Society were about equally divided between old and decrepit people and those in vigorous life.

Duss admitted but one new member from the time of his accession to the chief place—one Leonard Hoehr; this was on March 14, 1893.

Between March 14, 1893, and June, 1893, Duss entered into negotiations with the vigorous members, and bought seventeen of them out, (Record 2, pp. 951 to 956) He paid most of them $5,000 apiece; others more, one or two less, and one as low as $2,500. Among these is Leonard Hoehr, who had joined the Society two or three months before. The new members admitted before the death of Mr. Henrici in February, 1890, and before Duss had control, composed the great majority of those whom Duss bought out in 1893. The list of purchased members included the Junior Trustee, and the head of every department of the business of the Society.

These transactions were really acts of liquidation, and the ascertainment and payment of the *pro rata* share of each of the selling members in the property of the Society were acts of partition, as reference to the deeds and bills of sale will manifest.

These instruments recite *inter alia* that the selling member knew that the Society was the owner of stocks and bonds of the nominal value of several hundred thousand dollars, and also of judgments, mortgages and unsold real estate and buildings, of the nominal value of several hundred thousand dollars:

> "Also that while it may be that said Society may have
> " * * several hundred thousand dollars worth of property
> "after paying all its debts, we are entirely satisfied to *accept as*
> "*our share therein* the sum of * * * dollars.

In addition to this express *sale* of *shares*, the average of $5.000 each to the withdrawing members, was very nearly a full proportion of the Society's property, *as then valued by Duss*, to which each would be entitled were all the property so valued divided between all the members.

These purchases were certainly acts of winding up the Society, liquidating its affairs, and making partition of its effects. Each withdrawing member took his share in money. Further process of liquidation by purchase of the shares of remaining members was stopped by notice by petitioners of the proposed filing of this Bill.

Otherwise this procedure was a clear breach of trust; the members as such were entitled to no part of the funds of the Society, and the Trustees had no power to make such payments; under the terms of the Trust the Trust was created for the Society *as a Society*.

As was said by the late Justice Strong, in the of *Kain vs. Gibboney*, 101 U, S. 362, in construing a bequest which was claimed by the Sisters of St. Joseph:

> "That is an unincorporated association and it is the asso-"sociation *as such*, and not the individual members who com-"posed it * * which is declared to be the beneficiary " * * * . Its members must be constantly changing and "it must always be uncertain who may be its members at any "given time. No member can assert claim or individual bene-"fit from the bequest, or assert that she is a *cestui que trust*.

Depletion by Death.

Death came most efficiently to the aid of Mr. Duss in his expectation of survivorship. Eighteen deaths have removed as many outstanding lives. When this Bill was filed there were only fifteen members, including Duss and his wife. To-day there are only seven

persons exclusive of Duss and wife—nine in all. There are but two men left, Duss and Gillman. Gillman is seventy years of age and is an imbecile. The Board of Elders is composed of these two men and seven women. The Board of Trustees—to consist of two Elders—no longer exists. Duss is himself the sole Trustee. There remain no members to be governed.

The imperative requirements of the articles of 1847 are that the Board of Elders *shall* consist of nine members, and the Board of Trustees *shall* consist of two of the Elders. Every surviving member is required for the Eldership, and there remain no members to constitute a Society or to be governed. The whole scheme of a Society or a community has fallen by pre-arrangement.

As for the doctrine of celibacy Duss and his wife and children are living as a family in the Great House.

As for community of goods, it has been entirely abandoned. Duss as sole trustee is in absolute enjoyment as his own property of this great fortune, subject only to the insignificant expense of maintaining seven old and ordinary peasant women, for whose death Duss may patiently wait, or whose prior exclusion he can accomplish by purchase for trifling payments.

The Union Company

The last act, and to this we ask particular attention, consists of the *written consent of every member living at the time*, Elders, Trustees and lay members, to the entire and complete obliteration of the Society, of the Board of Elders and of the Board of Trustees, and the delegation, including a transfer of all its property, to a capitalistic corporation of Pennsylvania, (organized for profit for the purpose of buying and selling real estate) of all the powers and duties of the Board of Trustees.

The Union Company was incorporated in April, 1894, with a share capital of $400,000. The real object of the incorporation was to take over to itself all the trust real estate of the Society.

On the 11th of April, 1894, articles were executed, signed by every member ("Exhibit H," Record, Vol. 1, p. 112) in words as follows, viz:

"Whereas, The trustees of said Society are advised that a "suit is about to be brought against it in the name and on be- "half of a large number of persons who claim to be lawful "heirs of certain deceased members of said Society, the ob- "ject of said suit being to compel the Society to pay large sums "of money to said persons as portions of the Society's property "claimed to be due to said persons as heirs of such deceased "members, which claims we regard as totally unfounded; and

"Whereas, It may become necessary for said trustees, in "order that they may obtain money wherewith to pay the debts "of the Society, and otherwise properly protect its interests, "either to borrow money and give security for the payment "thereof, or sell the lands of the Society, and thereby obtain "cash for the payment of said indebtedness; and

"Whereas, The trustees are advised by counsel that the "lands of the Society can better be managed, as well as made "more available for the purposes of collateral security in case "loans are to be effected, and in case of sale a more satisfactory "title can be given to the purchaser, if said lands should be "first conveyed to an incorporated company, *to be thereafter "managed, sold and disposed of, by and in the name of said "incorporated company; and also avoiding thereby inconveni- "ence and trouble that may arise from time to time by change "of trustees, by death or otherwise.*

"Therefore, We, the members of said Harmony Society, "do each hereby express our consent with and request that "John S. Duss and Gottlieb Riethmueller, the present Trus- "tees of said Society, shall forthwith sell, transfer and convey "to the Union Company, a corporation duly created and or- "ganized under the laws of the State of Pennsylvania, *all the "lands, tenements and hereditaments, situated in Allegheny*

and Beaver Counties, Pennsylvania, now owned and held by "said Trustees for the benefit of the said Society to the end "that all said lands, tenements and hereditaments may be "owned, held and managed by said incorporated company and "be sold and otherwise disposed of from time to time in pur- "suance of proper corporate action as may be determined by "the directors and officers of said incorporated company.

"The capital stock of said incorporated company, however, "to be owned and held by the said Trustees for the benefit of "the Society, in accordance with and on the terms and condi- "tions of the articles of association of said Society and the "ratifications and modifications thereof, as the same now ex- "ists, to the extent of three hundred and ninety-seven thousand "five hundred ($397,500) dollars, out of a total capital of four "hundred thousand ($400,000) dollars."

The Society no longer owns a foot of land, nor a house to to shelter its members. The Trustees have no property to enable them to comply with the contract obligation to clothe, feed and lodge its members. The corpus of the the Trust properties, which, under the articles of 1847, were to always remain in the ownership and control of the Trustees, subject to the Trusts, and which was always to be exclusively managed by the Board of Trustees, has passed clear and freed from the Trusts from this communistic Society into the hands of a capitalistic corporation, to be subjected to the debts of the corporation, to the payment of corporate taxes, and to the vicissitudes of a business having not the remotest relation to the objects and purposes of the Harmony Society.

An examination of the powers of the Trustees will show conclusively they had no power in the execution of their Trust to exchange all their lands for stock, and to constitute the Union Company as their substitute. We quote from the Articles of 1847:

"Article 5th. The said Trustees shall jointly and sever- "ally have and exercise the powers following, to-wit: 1st.

"In their own names or that of either of them, or otherwise, to "purchase and sell, deal, barter, exchange and traffic, make all "contracts and bargains in the prosecution of the business, to "invest the funds in stocks and other securities, and make "transfers and assignments, to collect debts, receive and pay "out moneys, settle claims, compromise disputes, institute legal "proceedings, appoint and dismiss agents, clerks and attorneys "in fact, and at law, and generally to transact all the external "business affairs of the Society. 2nd. To make donations to "seceding and excluded members and to the representatives "of those who are deceased and for such benevolent and char- "itable purposes as they may deem prudent and fit. 3rd. The "said Trustees shall have power jointly to purchase real estate "in their own names and also in their joint names to grant, "bargain, sell and convey all or any of the lands and tenements "now or hereafter owned by or belonging to the said Society, "and for this purpose to execute deeds of conveyance in fee "simple or otherwise in their joint names, but the proceeds of "all such sales shall be held in trust for the Society. 4th. For "the purpose of providing effectual and convenient remedy in "law for all injuries to the property of the said Society, real "and personal, by trespass, ouster, detention, conversion or "otherwise. The said Trustees are hereby invested with the "rights of possession, entry and action in their own names as "fully and to all intents and purposes, as do and may exist in "the said Society, and to effectuate this object more completely "and in consideration thereof, we grant and transfer to the "said Trustees all such title and interest in the said property "as shall be necessary therefor. The proceeds of all suits to be brought shall be in trust for the Society. 5th. The pow- "ers hereby vested in the said Trustees shall extend in and "embrace all the property of said Society, real, personal or "mixed, whether standing or held in the name of the late "Frederick Rapp, the said George Rapp, or in any other name "or form whatsoever.

"Article 6th. It is hereby distinctly and absolutely de- "clared and provided that all the property, real, personal and "mixed, which now or hereafter shall be held or acquired by "any trustee or trustees or person under them, is and shall be "deemed the common property of said society, and each trus-

"tee now or hereafter appointed, hereby disclaims all personal "interest in the present resources and future earnings of the "society, other than that of a member thereof, according to "the articles of association hereby re-established and contin- "ued, and according to the present agreement."

The Board of Trustees can no longer have "the exclusive management of the external business of the society."

The Board of Elders cannot exercise the powers confided to them. In the case of a vacancy in that board "occasioned by death, resignation or removal from office," they have no other member to fill the vacancy.

The Board of Directors of the Union Company, with one exception, is composed of persons not members of the Society. The Company cannot under its charter, treat its property as still subject to the communistic principles of the Economy Society, its control by the Board of Elders, but must hold and dispose of it for the profit of the Company under the laws of Pennsylvania.

In brief the society is a shell; its name is retained as a mask.

We submit that error was committed in disregarding these facts as acts of dissolution

IV.
Basis of Plaintiff's Title.

Acting upon the belief that the principles and purposes of the society had been abandoned, that the society had ceased to exist and that the Trusts had failed, the petitioners, recognizing the fact that the property of the society had been conveyed away, and that there was imminent danger it would be transferred, sold or disposed of to the prejudice of their claims by the Union Company, within a few days after the transfer had been made filed their bill for relief in the premises.

Their right to so sue is denied by the Master, and his finding is sustained by the Circuit Court and by the Circuit Court of Appeals. The grounds for this finding disclose that petitioners' real title for relief was misunderstood, and not considered by the Master or by either of the tribunals.

The plaintiffs claim, as the admitted heirs and legal representatives of ancestors who died members of the Society since the year 1836. There is no denial of their representative capacity.

They claim that these ancestors, with all subsequent members of the Society who signed the articles of 1836, or adopted them by signing the subsequent confirmatory articles of 1847, were the donors in equal proportions of all the trust properties held for the use and benefit of the Harmony Society.

That upon the failure of those trusts there being no remainder over, the corpus of the trust properties reverted by way of resulting Trust to those donors, and to the heirs and legal representatives of those of them who had died members of the Society.

Hence, they have sued *not* the Harmony Society, because it no longer exists, but all the remaining members of it, including the Trustees and the Union Company, who have among them this property, which had reverted as aforesaid.

The plaintiffs do *not* sue a living and going Society to receive specific contributions of their respective ancestors out of an existing and valid trust. The Master made his ruling against us upon the hypothesis that we do so sue.

V.

The petitioners' rights as reversioners are based upon the articles of 1836.

It will be remembered that under all the articles preceding those of 1836, every adopted member, upon withdrawal from membership, was entitled to the restoration to him of all his contributions to the community of lands, monies, goods and chattels without interest, and payable to him in one, two and three years from the time of his withdrawal.

This vested in every contributing member a property right or interest.

The articles of October 31, 1896, ("Exhibit D," Vol. 1, pp. 57, *et seq.*) were entered into by all the owners of this right of restoration, held by each in unequal proportions, and they contracted with each other and with all subsequent signatories to abandon that right, and to transfer to all members equally this right of restoration, and covenanted that thenceforth all property,

> "real, personal and mixed in law and eqity, and howsoever "contributed or acquired, shall be deemed now and forever "*joint and indivisible stock*. Each individual is to be consid- "ered as having parted with all his former contributions, "whether in land, goods, money or labor; and the same rule "shall apply to all future contributions, whatever they may "be."

Subsequent provisions of these articles declared the trusts to which this "joint and indivisible" stock was subjected. The result necessarily was to vest in all the members an equal share of the corpus of the Trust properties, so that if the Society had been dissolved the next day, all the members as the equal

donors of the trust property would have divided the entire estate between them as reversioners by way of resulting Trust. That being the case it matters not when the failure of the Trusts occur; when it does occur, the trust properties revert by way of resulting trust to all who had been the equal owners of this joint and indivisible stock.

There is no place else for the property to go in such event.

The trusts are not created for the benefit of *the members as members, but for the society as a society.* Hence the members as members cannot take. There is no remainder over provided for by any of the articles in the event of the dissolution of the society from any cause. There is no provision for a joint tenancy with a right of survivorship or for a system of tontine.

To exclude the plaintiffs is equivalent to asserting that the scheme of this society was to create an aggregation of great wealth on communistic basis, *for the final benefit of the last survivor*, thus inviting effort to destroy in favor of the last survivor the very community it was the intent to maintain and make prosperous.

There can be no escheat because the association is not incorporated.

The Trustees cannot retain it, because they have declared that the property held by them they hold as Trustees.

In this construction of the article of 1836 for which we contend, we are supported by the decision of the lower Court in the case of *Nachtrieb vs. Baker et al.*, Trustees of the Harmony Society, in an opinion of Judge Irwin, supported by the late Justice Grier of this Court sitting in that Circuit. The case came to this Court and is reported in 19 Howard (U. S.) 126. The decision

was reversed upon the grounds, 1st. That Nachtrieb had released the Society, and 2nd. The bill had not made the averments necessary to justify an inquiry into the questions of hardship and violation of public policy. No dissent from the conclusions of the Court below except in these respects is noted.

Nachtrieb claimed that he had been unlawfully and unjustly excluded from membership, and sought to recover his share of the property of the society.

Judge Irwin finding that Nachtrieb had been unjustly excluded, proceeds to say:

> " * * "it is material to know the amount of interest "which by several agreements was the complainant's propor- "tion in the property of the society at the time he was re- "moved. *It was held by the superintendent in trust for the "common use and benefit of all its members as joint and indi- "visible stock. The complainant's interest was therefore an "equal undivided interest of all that property to be determined "after the settlement of all just claims against the society by "the number of its members.*"

A Master was appointed to ascertain the values of the society's property over and above its debts, and the actual amount coming to Nachtrieb. This report and account of the Master was confirmed by Justice Grier, who entered the final decree.

The opinion of Justice Grier in entering the final decree is reported in 3 Wallace, Jr., p. 81.

In this opinion Justice Grier clearly held that when the contract between the members of the association and the association itself *was broken*, that then the member was entitled under the articles of 1836 *to an equal share of the property of the association, as*

one of the owners of the joint and indivisible stock created by the articles of 1836; that although by the contract and agreement referred to of the several members of the association, each has an equal right and interest in their common property; yet as the association had unlawfully excluded the plaintiff, Nachtrieb, the contract between him and the association *was broken* and he was entitled to an equal share of the property, namely, one three hundred and twenty-first part, there being then, including Nachtrieb, three hundred and twenty-one members.

It therefore follows, viz: that *each of* the signatories of the articles of 1836 had an equal share of all the property, and could receive it when the contract *was broken*, upon which the society received it. And it is submitted that the dissolution of the society for which the property was given and the trust was established, constituted a *breaking* of the contract.

The opinion of Judge Irwin certified by the Clerk of the Court, is contained in the "Supplemental Paper Book" of the defendants, a copy of which is filed with this brief.

The Master says that we cannot maintain this Bill, because by the articles of 1836 it was agreed that:

> "Should any individual withdraw from the society, or de-
> "part this life, neither he in the one case, nor his representa-
> "tives in the other shall be *entitled to demand* an account *of*
> "*said contributions*, whether in land, goods, money or labor, or
> "claim anything from the society as matter of right."

As we are not seeking from the *society*, as a living *society* an accounting of the specific contributions of our ancesters, or in point of fact claiming anything from the *society* at all,—and are only claiming because there is no society and because the trusts have therefore failed, it is difficult to see the application which the Master makes.

In the Nachtrieb case this clause was held not to be applicable when the contract in which it appears is *broken*. How much the

more when the whole contract is defeated by the death of the society it was the purpose of the contract to maintain.

Prior Cases.

Although the affairs of the Harmony Society have several times been before this Court, and before the Supreme Court of Pennsylvania, a full consideration of the purposes and principles and mode of government of that society, though recognized as proper subjects of judicial investigation, was defeated by reason of defect in pleading, or the character of the suit, or a defect in the status of the plaintiffs, or some collateral matter.

The case at bar is the only case within our knowledge which involves a recognition of the termination of the life of this society by reason of the unlawfulness of the Trusts; or the result of abandonment of principles, actual liquidation, or other acts in *pais*, and which seeks a general distribution of its property among all entitled to distribution, by way of resulting trust.

In every preceding case, the plaintiff sued an *existing* society, and recognized the society as a *going* society; in every case he sued to recover either his own specific contribution of property or labor, or the specific contributions of his ancestors.

Review of the Cases.

The first case in the order of time was brought by Peter Schreiber's administrator and is reported in 5 Watts (Pa) 351. This was an action of account render for Schreiber's share of profits arising under the joint transactions of the society. The action declared for an alleged partnership, and therefore affirmed the rightfulness of the partnership, and its continuing existence.

At the time of the death of Schreiber, the principle of restoration of goods to withdrawing members was in force. Schreiber had, however, not withdrawn, but had died in the society without exercising his right of withdrawal, and had also executed a release to the society in the broadest terms of every suit, claim or demand against Rapp and his associates from the beginning of the world.

The evidence also showed that there were no creditors of the decedent's estate.

Then comes the case of Nachtrieb just referred to, reported in 19th Howard, 126. As we have already said, Nachtrieb sued to recover only his own share of the property of a Society which he recognized as an existing Society. He neither attacked the Society itself nor assailed the validity of the trusts created. His grievance was that he had been unjustly and unlawfully excluded from membership, and "deprived of all share and participation in its property and effects, its benefits and advantages by the fraud and combination of George Rapp and his associates."

The lower Court found his charges sustained by the evidence, and entered an interlocutory decree that his interest should be ascertained under the articles of 1836, as an equal owner of the joint and indivisible stock. And Justice Grier, sitting in Circuit entered the final decree sustaining Judge Irwin.

This Court, however, held that a certain receipt of Nachtrieb was in reality a release; and, therefore, barred his action.

The Supreme Court of the United States recognized the right of inquiry for equitable relief, to show that the

> "Rule of the leader, instead of being patriarchal, was "austere, oppressive or tyranical; his discipline, vexations and "cruel; his instructions fanatical, and, upon occasions, impious, "his system repugnant to public order, and the domestic hap- "piness of its members; his management of their revenues and

"estate, rapacious and selfish, or dishonest; and that the condi-
"tion of his subjects was servile, ignorant and degraded, so
"that none of them were responsible for their contracts or en-
"gagements to him, from a defect of capacity and freedom."

The Court further says:

"It was a necessary prerequisite that the bill should have
"been so framed as to exhibit such aspects of the internal ar-
"rangement and social and religious economy of the associa-
"tion. This was not done; and for this cause the evidence can-
"not be considerad."

The whole case was before this Court, and there is no expression of dissent from any conclusion of the lower Court. The structure of the bill precluded the relief. Had the pleadings shown such an issue, this Court would have considered the evidence, and if sustained, granted relief.

The case of *Spiedel vs. Henrici* is reported in 120 (U. S.) 377. The opinion of the Court was rendered by Mr. Justice GRAY.

The bill in that case sought to recover specific contributions made by Spiedel to the Society, under the articles of 1805 and 1827, under which he had the right of restoration upon withdrawal from membership. He had withdrawn from the Society before the articles of 1836, which annulled the right of restoration. It in no wise involved the question of dissolution of the Society, the consequent failure of Trust, and the rights of reversioners by way of resulting Trust. In fact it could not.

This Court holding the Trust created to be an express trust, disposed of the case as expressed in the syllabus, as follows, viz;

"A bill in equity against persons holding a fund avowedly "in trust for the common benefit of the members of a voluntary "association, living together as a community, subject to its "regulations, cannot, whether the trust is lawful or unlawful, "be maintained by one who has left the community, and for "fifty years afterwards taken no steps to claim any interest in "the fund."

It was distinctly stated in that opinion as follows, viz:

"It is proper to add that this decision does not rest in any "degree upon the judgments of the Supreme Court of Penn-"sylvania, and of this Court, in the cases cited at bar, in favor "of the Trustees of the Harmony Society in suits brought "against them by other members, because each of those cases "differed in its facts, and especially in showing that the Society "had written articles of of association, which are not disclosed "by this bill. *Schreiber vs. Rapp*, 5 Watts, 351, (S. C., 30 "Am., Dec. 327); *Baker vs. Nachtrieb*, 19 How. 126.

VII.

Counsel for petitioners, in addition to the foregoing, further respectfully represents to the Court:

That some of the Trust properties are situated in the State of Michigan, as is recited in the contracts of sale of retiring members to the Trustees, dated in 1894, heretofore referred to.

That as counsel are advised and believe, heirs and representatives of ancestors dying in the Society, who were donors of the Trust funds, and who have causes of action similar to those of the petitioners reside in the State of Ohio, Michigan, West Virginia and other States and Territories, and would not be precluded from legal procedure in other Circuits than the Third Circuit.

That the questions involved in this case will apply to numerous similar unincorporated communistic societies in the United States, among them notably the Teed Community, the Dowie Community, the Harris Community. whose principles, purposes and autocracy of government and concentration of wealth have excited widespread animadversions.

That in the several cases affecting this Society the questions involved were not considered or passed upon by reason of some bar to the plaintiff by release or by staleness of the claim; and that none of the cases presented the termination of the life of the Society, the failure of the Trusts, and the destination of the *corpus* of the Trust properties.

That, as hereinbefore set forth, these questions have not been adequately considered by the Court of Appeals; and the title of the plaintiffs as distributees is misunderstood.

It is further respectfully represented that the Trust property of the Society is in the possession of an irresponsible corporation dealing in real estate, which has it in its power to dispose of it all to third persons ignorant of any trust; that its title was acquired for a grossly inadequate and fraudulent undervaluation, and was paid for by its entire capital stock of $400,000; and that petitioners are unprotected by any interlocutory decree to preserve its *status quo*.

Counsel file with this brief, copies of their printed argument presented to the Circuit Court of Appeals, in which the authorities upon which they mainly rely are collated, should any reference to authorities be thought advisable.

Therefore, in conclusion we most earnestly and respectfully represent that if the present decree is permitted to stand, Mr. Duss, the Senior Trustee, is:

(1) Openly invited to close the door to new members and to purchase the retirement of all the seven remaining members (under deeds of liquidation similar to the ones that were signed by the members retiring since the year 1893), so that he and his wife will alone remain in possession of this great estate and answerable to no one for its use or disposition.

(2) If it were lawful for the remaining members of the Society to convey all the trust property to the Union Company, it will be lawful in the future:

(a) Either to sell certificates of stock in the Union Company for cash and depart with the proceeds;

(b) Or convert said assets to other private or capitalistic enterprises independent of their character or relation to the trusts under which said property was admittedly held.

Therefore, it finally follows, that while the Circuit Court held it was unnecessary to pass upon and determine the final disposition of the property in case of dissolution, that we, as reversioners, must stand idly by and witness the practical and effective private sequestration of the trust estate until nothing remains to revert, because this covert method of disintegration will put the entire trust estate into the hands of the present surviving members without let or hindrance. To leave this cause in such a position seems improvident, and affords the present complainants no means whatever of protecting their rights in the premises.

Reversioners, just as in the case of remaindermen, have rights that a chancellor alone can adequately protect. The present decree invites the waste or entire dissipation of the trust estate, besides imposing heavy costs on the complainants in their efforts to conserve the estate of their ancestors. As the next of kin and as reversioners under a resulting trust, the complainants occupy a position entitling them to the protection of a court of equity, instead of leaving the whole estate in the hands of one whom the evidence

shows to be wholly irresponsible, and, judged by his previous acts, intent upon the absorption of the assets of the Society by himself and his colleagues through methods so certain, if continued, that this "joint and indivisible stock" will become the private fortune of a man who never contributed a dollar or an acre of land to the Society; a result clearly and utterly at variance with the articles of association creating the trust. While it may be, that the ancestors of the plaintiffs intended (whether this could be lawfully done or not) that all inheritable rights should be suspended during the life of the society, it is equally clear that they never intended that one or more persons who later were entrusted with the control and perpetuation of the society, should be rewarded with the whole trust estate by acts of dissolution brought about by the coveteousness and treachery of would-be surviving members, acting as private liquidators.

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S. SCHOYER, JR.,
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Counsel for Petitioners.

Reply to Respondents' Brief.

Since the preparation of the foregoing Brief, Petitioners' counsel have been served with copies of a Brief for the Defendants in answer to the Petition for the allowance of a writ of *certiorari* in this case. In many respects the Respondents' Brief is misleading, and as the same has been served upon us only on Friday afternoon, the 25th of January, we find ourselves unable to make a more extensive correction than those we now present. The inaccuracies, we are satisfied, arise from the fact that counsel who prepared the Brief in opposition to our motion is almost entirely unfamiliar with the evidence and most of the legal questions arising in the case. He did not participate in the taking of any of the testimony before the Master, nor in any of the numerous legal arguments before the several tribunals, and he has been forced to discuss these questions owing to the absence, abroad, of the counsel who appeared in the courts below.

In the opening paragraph under the title "History of the Litigation," Respondents' counsel says in reference to the plaintiff: "They merely claim to represent, by consanguinity, the alleged rights of persons who were, at one time (*in each case very remote*), members of the Society, and who died in membership, *or withdrew from the Society many years ago.*"

The Complainants never, either in the Bill or throughout the litigation, claimed as heirs of "members who withdrew from the Society," and it is equally erroneous to state that such heirship is remote either in consanguinity or by reason of the long decease of their ancestors. Christian Schwartz, the first named plaintiff, is admittedly the only heir of his father and mother who died in the Society, and also the only heir of his seven brothers and sisters who died in full membership—some of them as recently as 1887 and 1889. No evidence was offered to show the value of the money or land contributed by the ancestors of the plaintiffs, or the value of the labor of said ancestors, upon which most of the wealth of the Society was founded, because such proof would have been incon-

sistent and in contravention of our contention that the plaintiffs' rights were based upon the fact that their ancestors were equal and joint owners under the article of 1836. The statement in Respondent's Brief that plaintiffs' ancestors never contributed a cent to the Society is therefore misleading for the above reason. Further the statement that there would probably be *twenty thousand heirs* to share in the Society's property, and that the present Complainants would be entitled to less than than $750.00 is entirely unsupported by evidence and unwarranted. Schwartz, for instance, is the only heir of nine deceased members, while the members dying in fellowship are much less than cited by counsel; though, it is likely, that there are several hundred citizens scattered throughout the United States who are affected by this litigation and whose rights will either be determined by it, or if not, they will be left to renew this litigation in various Circuits of the Federal Courts. This is the first time we have ever heard it presented as an argument against the review of a case that there are a large number of persons affected by the present litigation.

Neither in the Court of Appeals nor in this Court have the allegations respecting the moral turpitude of John S. Duss, or the financial condition of the Society which it is alleged confronted the Trustees of that Society in the years 1892, 1893, 1894, been pressed for consideration; and therefore so much of Respondent's Brief as relates thereto is improperly included therein. We cannot understand the purpose of such arguments before this Court unless in the expectation of exciting prejudice or clouding the issues, and as many of these statements are erroneous, and as made, seemingly reflect not only upon the counsel in this case but upon their clients, we feel impelled to make certain corrections of several statements, which while immaterial now, and not presented or discussed by any assignments of error reviewed by the Court of Appeals, yet as presented in the Respondents' Brief, are used to exalt the character of Mr. Duss and besmirch the character of the Complainants. On page 21 of Respondents' Brief are cited two instances of the alleged unjust character of the plaintiffs' attacks on

Mr. Duss: One alleges that Complainants averred that Mr. Duss was the friend and confederate of Dr. Cyrus Teed, a notorious libertine who presided over an institution in Chicago, filled with depraved women, and that Mr. Duss at one time tried to get Teed and some of his followers into the Society. As to these statements Respondent's counsel says: "There was not a single word of testimony to justify this charge. Not a *single* word." Considering the fact that there are *over one hundred pages* bearing directly on these charges, and that it was clearly shown that Mr. Duss was a friend of Teed, that he gave him money, entertained him as a guest, that he and Mrs. Duss visited Teed at his retreat in Chicago, that Mr. Duss sent a young female member of his household to live with Teed without her parent's knowledge, that he employed one of Teed's female followers ostensibly as a cook and had her installed in the Great House where she remained a year in close contact with the decrepid Senior Trustee Henrici, studying, as she testified, the affairs of the Society, and considering that when Mr. Duss was the acting Junior Trustee an expensive house was built on the outskirts of the town of Economy, and its erection was partly under the supervision of Teed's brother, that reputable members of the Harmony Society in this case testified that it was rumored in the Society that this house was being erected for Cyrus Teed, we cannot understand the counsel's statement that the evidence failed to show Duss' intimacy with Teed or justified the suspicions as to his intentions. These facts together with the citations of evidence appear on page 20 in the History of the Case of Appellant's Brief in the Court of Appeals.

The other instance singled out and cited as evidence of the unjust treatment of Mr. Duss, appears on pages 21 and 22 of Respondents' Brief, wherein it is stated that Complainants' charge that Mr. Duss "had been guilty of the gravest duplicity with his cousin Fredrika R. Kroll, a young girl of eighteen years of age, formerly a member of his household, in secretly taking her to Teed's residence, &c." The testimony shows that Mr. Duss did secretly, without the knowledge of the girl's mother, take her to Teed's abode in

Chicago, where she remained over a year, and that this occurred about a week after it was testified to by witness Weggel that he had caught Mr. Duss and his cousin *in flagrante delicto*. On the question as to what this latter witness testified, we again quote from page 22, Respondents' Brief:

> "The witness who offered to support this charge was a *defeated* suitor against the Harmony Society. His evidence was plainly false upon its face, and he *subsequently appeared before the Master and admitted, and stuck to his admissions under the closest cross examinations, that the entire charge which he swore to was false, and he had been guilty of the most barefaced perjury.*"

Our reply to this is, first, that it was shown at the time the witness first circulated this story that he had *not* lost his suit against the Harmony Society; secondly, the counsel for Respondents has neglected to tell the *sequel* to this witness' (Weggel's) recantation, namely, that the Complainants caused an information *for perjury* to be made against him in *thus recanting*, that he was indicted by the Grand Jury and called for trial in 1895, at the October Term of the United States District Court, where he *plead guilty to the charge of perjury*, stating that he was improperly influenced by Duss to recant, and that his original testimony was correct, and thereupon, Judge Buffington presiding, sentenced Weggel to the Penitentiary for a year and a quarter. Vide, page 937, Record, Vol. II. The testimony further shows that this young girl's mother, when called as a witness by Complainants, testified that John Scheid, a member of the Board of Elders, and a friend of Mr. Duss', informed her that he had heard that Duss had wronged her daughter, and she further testified, "He said I should let everything go and not say anything about it, that Mr. Duss was a minister, that everything would go right." Page 649, typewritten testimony taken before the Master. Whether the Master was right or wrong in clearing Mr. Duss on this point, cannot now be discussed, except to say that the testimony shows the good faith of the Complainants in this matter. The alleged history of Mr.

Duss' life in Respondents' Brief is made up partly of unproved paragraphs of the Defendants' Answer and of disputed statements of his own, and we respectfully refer again to the History of the Case in Appellants' Brief for a full review of this man's record.

The recent financial history of the Society in Respondents' Brief is in no wise warranted by the present proceeding. The Petitioners answers to these statements will be found on page 38, 39 and 40, History of the Case, *ante*. Likewise the allegation that Mr. Duss tried to prevent the members from retiring, and that he could not induce new members to enter into the Society on account of the Feucht litigation, we most respectfully refer the Court to pages 22–39, inclusive, Ibid, where the citations of evidence clearly show how unfounded and trivial Mr. Duss' explanations are, and also we refer the Court to pages 202 to 206 inclusive, Appellants' Argument

This reply is hurriedly printed for the purpose of calling attention to certain inaccuracies in Respondents' Brief and not for the purpose of touching upon subjects that are really germane to these proceedings. The importance of the questions involved render it impossible now to review Respondents' arguments thereon.

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S. SCHOYER, JR.,
Of Counsel for Petitioners.

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IN THE

United States Circuit Court of Appeals,

THIRD CIRCUIT.

No. **MARCH TERM, 1900.**

CHRISTIAN SCHWARTZ, a citizen of the State of West Virginia, ANTONY KOTERBA, DAVID STROHAKER, and ALLEN SHALE, citizens of the State of Ohio and G. L. SHALE, a citizen of South Dakota,

vs.

JOHN S. DUSS, GOTTLIEB RIETHMUELLER, FRANZ GILLMAN, CONRAD HERMANSDOERFER, EDWARD KELLERMAN, JOHANNA HERMANSDOERFER, SUSIE G. DUSS, KAROLINE MOLT, KATRINA NAGEL, ELIZABETH BECK, MARIA DIEM, BARBARA BOEH, FREDERICKA MUNTZ, DOROTHEA HOEHR, REGINA LAUTENSCHLAGER, CHRISTIAN RALL, HENRY HICE and JOHN REEVES, citizens of the State of Pennsylvania and THE UNION COMPANY, a corporation citizen of the State of Pennsylvania.

History of the Case.

The present proceeding was instituted for the purpose of having the remaining assets of an alleged defunct Society distributed among those entitled thereto, including the present plaintiffs. Complainants position.

The history of the Harmony Society is unique in the annals of sociology; while the legal questions now to be passed upon are, for the most part, novel in our jurisprudence. The State Court of Pennsylvania has reviewed one or two questions affecting the Society at a date prior to the alteration of the main Article of Association, and before

the State had passed laws prescribing the different methods of incorporation, &c., so that its construction of certain matters is inconclusive or does not cover the questions raised in this cause; the Federal Courts, so far as they have touched upon the validity and character of this organization, have, in the opinion of plaintiff's counsel, been adverse in their approval of such a scheme of government. This is the first time that the question of dissolution has been raised, or the manner in which the trust properties, constituting the assets of this Society, infringe upon the rule against perpetuities, or of the rights of heirs of deceased members to demand an accounting where the trust is illegal, or the same cannot be conserved and is ended. This and several new and equally important questions are raised in the present record for the first time.

The Society had its inception at the beginning of the present century; its membership gradually rising to upwards of six hundred, and as the century draws to a close, the present tribunal is called upon to determine the disposition of assets, amounting to and possibly in excess of two million of dollars, which it is alleged the prearranged survivors of the Society, eight or nine in number, have recently converted into a form, that, if legal, makes the "joint and indivisible" property as volatile as air and its ownership as mutable as negotiable paper.

Briefly the present complainants are the heirs of deceased intestate members dying in this Society since 1836, and rest their claims upon the fact that the alleged perpetual trust, whether legal or otherwise, no longer bars their participation in the property of this Society which their ancestors owned jointly with the other members of the Society at the time of their death; which property has been made "divisible" among the present defendants, and certain former members who have recently had apportioned them out of this "joint and indivisible" estate, money and real estate, amounting to many thousand dollars. The com-

plainants filed their Bill to prevent further liquidation in the final division of the assets among the present defendants.

Defendants' position.

The defendants admit that the present Complainants are the next of kin of certain deceased members of the Harmony Society; but allege in substance that the several Articles of Association have precluded the ancestors or their heirs and all others except living members from participation in the property of the Society; so that even if the progenitors of said plaintiffs were the joint owners of an indivisible estate, they passed their title, under the Articles of Association, to the survivors in the Society under the trust, and that at no time were or are the laws of inheritance enforcible in any form, whatever the wealth of the Society, in whatsoever form it existed, or whatever the relation of an heir to a deceased member; and further that the manner the present members have disposed of the real and personal property of the Society is legal, and the present Complainants have no legal or equitable claim thereto, or any right whatsoever to question the same. Upon these issues and the ones incident thereto, the present cause rests.

History of the Society.

For the convenience of the Court there is hereby appended a brief history of the Harmony Society, and its several Articles of Association, before presenting in detail the other material, admitted facts, and the issues of law and fact arising under the Complainant's assignments of error.

In the year 1803 George Rapp and his son John, and several of their friends, left the Kingdom of Wurtemberg, came to the United States, and located at a place called Harmony, in Butler County, Pennsylvania, where they were joined by a considerable number of other emigrants. They remained there until the year 1814, when they removed to Posey County, Indiana, where they remained until the year 1825, when becoming dissatisfied, they moved back to Pennsylvania, and located at Economy, in Beaver County, Pennsylvania, where they ever since have resided.

PAGE CUT OFF

They formed a society or an association called "The Harmony Society," and in 1805 they made the first written contract between them.

That said society was organized upon the principle of community of goods and land ownership. The members of the said society, who had brought with them from Wurtemberg money, combined their funds and held all their property in common, they living as members of a common household, and each member enjoying alike with every other the fruits of their common labor in equality and brotherhood. The occupation or business of said society was agriculture, except in so far as it was necessary to manufacture shoes, clothing and other necessaries for the community. The members of said society obeyed said George Rapp as their spiritual and temporal leader and ruler. The only laws or rules governing said society were made by him, the members thereof having no voice in their enactment.

About the year 1807 the community promulgated the doctrine of celibacy as being necessary for the success of a communistic society.

Article of 1805.

The Article of 1805, "Exhibit A," pg. 47, vol. 1, Record, is as follows:

"Be it hereby known to all who need to know that the following agreement has this day been made and concluded between us, the subscribers of the one part, and George Rapp and his associates of the other part:

"ARTICLE 1. We, the subscribers, on our part, and on the part of our heirs and descendants, deliver up, renounce and remit all our estate and property consisting of cash, land and chattels, or whatever it may be, to George Rapp and his associates, in Harmony, Butler County, Pennsylvania as a free gift or donation, for the benefit and use of the community there, and bind ourselves on our part, as well as on the part of our heirs and descendants, to make free renunciation thereof, and to leave the same at the disposal of the superintendents

of the community, as if we had never had nor possessed it.

"ARTICLE 2. We do pledge ourselves jointly and severally to submit to the laws and regulations of the community, and to show due and ready obedience toward those who are appointed and chosen by the community as superintendents in such a manner that not only we ourselves endeavor, by the labor of our hands, to promote the good and interest of the community, but also to hold our children and families to do the same.

"ARTICLE 3. If, contrary to our expectation, the case should happen, and we jointly or severally could not stand to it in the community, and we would within a few or more years break our promises and withdraw from the community, for whatever cause it may be, never to demand any reward, either for ourselves or children or those belonging to us, for any of our labor or services rendered, but whatever we jointly and severally shall or may do, we will have all done as a voluntary service for our brethren.

"In consideration whereof George Rapp and his associates adopt the subscribers jointly and severally as members of the community, whereby each of them obtains the privilege to be present at each religious meeting; not only they themselves, but also their children and families, shall and will receive the same necessary instructions in church and school which is needful and requisite for their temporal good and welfare as well as eternal felicity.

"ARTICLE 4. George Rapp and his associates promise to supply the subscribers jointly and severally with all the necessaries of life, as lodging, meat, drink and clothing, etc., and not only during their healthful days, but also when one or more of them become sick or otherwise unfit for labor, they shall have and enjoy the same support and maintenance as before; and if, after a short or long period the father or mother of a family should die, or be otherwise departed from the community and leave a family behind, they shall not be left widows or orphans, but partake of the same rights and

maintenances as long as they live or remain in the community, as well in sick as healthful days, the same as before, or as circumstances or necessity may require.

"ARTICLE 5. And if the case should happen as stated above, that one or more of the subscribers after a short or long period, should break their promise and could or would not submit to the laws and regulations of the church or community, and for that or any other cause would leave Harmony, George Rapp and his associates promise to refund him or them, the value of his or their property brought in without interest, in one, two or three annual installments, as the sum may be, large or small; and if one or more of them were poor and brought nothing in the community, they shall, provided they depart openly and orderly, receive a donation in money, according to his or their conduct while a member, or as he or their circumstances and necessities may require, which George Rapp and his associates shall determine at or their departure.

"In confirmation whereof both parties have signed their names.

"Done in Harmony, February 15, 1805."

They became the owners of about seven thousand acres of land at Harmony, Butler County, which, on May 6th, 1815, was conveyed by Frederick Rapp, as their attorney in fact, to Abraham Ziegler, for the consideration of $100,000. And in that year, or in 1814, the society removed from Butler County, Pennsylvania, to Posey County, state of Indiana, where, in 1821, a second agreement with each other, in German, was entered into by them. A copy of the translation of which, not including the signature, is "Exhibit B," pg. 50, vol. 1, of Record.

This agreement and that of 1805, remained in the possession of the society until a short time prior to the filing of the bill in this case, when they were lost; but the copies attached to the answer were considered as offered in evidence, as correct copies of the agreements.

In 1825 the society removed from Indiana to Beaver County, Pennsylvania, where they purchased, and settled upon a tract of land containing about 3,000 acres, now known as "Economy," where they have since remained, and which has since become very valuable, and on which they have erected many buildings, including dwellings and factories of various kinds, and made many valuable improvements.

In 1827 the agreement, written in both English and German, on pages one to eleven of Exhibit No. 18 in evidence, was entered into by the then members of the association. The English version of this agreement is as follows, viz;

"*Whereas*, By the favor of Divine Providence, an association, or community, has been formed by George Rapp and many others, upon the basis of Christian Fellowship, the principles of which being faithfully derived from the sacred scriptures, include the government of the patriarchal age, united to the community of property adopted in the days of the apostles, and wherein the single object sought is to approximate, as far as human imperfection may allow, to the fulfillment of the will of God, by the exercises of those affections, and the practice of those virtues which are essential to the happiness of man in time and throughout eternity: Article of 1827.

"*And whereas*, It is necessary to the good order and well-being of said association that the condition of membership should be clearly understood, and that the rights, and privileges, and duties of every individual therein should be so defined as to prevent mistake or disappointment on the one hand, and contention or disagreement on the other.

"*Therefore*, Be it known to all to whom it may concern: That we, the undersigned, citizens of Beaver County, in the Commonwealth of Pennsylvania, do severally and dis-

tinctly, each for himself, covenant, grant, and agree to, and with the said George Rapp, and his associates, as follows, to wit:

"ARTICLE 1. We, the undersigned, for ourselves, our heirs, executors and administrators, do hereby give, grant, and forever convey, to the said George Rapp and his associates, and their heirs and assigns, all our property, real, personal and mixed, whether it be lands and tenements, goods, and chattels, money or debts due to us, jointly or severally, in possession, or in remainder, or in revision, or in expectancy, whatsoever or wheresoever, without evasion, or qualification, or reserve, as a free gift or donation, for the benefit and use of the said association or community; and we do hereby bind ourselves, our heirs, executors and administrators, to all such other acts as may be necessary to vest a perfect title to the same in the said association, and to place the said property at the full disposal of the Superintendents of the said community without delay.

"ARTICLE 2. We do further covenant and agree to and with the said George Rapp, and his associates, that we will severally submit faithfully to the laws and regulations of the said community, and will at all times manifest a cheerful and ready obedience toward those who are or may be appointed as superintendents thereof, holding ourselves bound to promote the interests and welfare of the said community, not only by the labor of our own hands, but also by that of our children or families and others who are or hereafter may be under our control.

"ARTICLE 3. If, contrary to our expectations, it should so happen that we could not render the faithful obedience aforesaid, and should be induced, from that or any other cause, to withdraw from the said association, then and in such case, we do expressly covenant and agree to and with the said George Rapp, and his associates, that we will never claim or demand, either for ourselves, our children, or for any one belonging to us, directly or indirectly, and compen-

sation, wages or reward whatever, for our or their labor or services rendered to the said community, or to any member thereof; but whatever we or our families jointly or severally shall or may do, all shall be held and considered as a voluntary service for our brethren.

"ARTICLE 4. In consideration of the premises, the said George Rapp, and his associates, do by these presents, adopt the undersigned, jointly and severally, as members of the said community, whereby each of them obtains the privilege of being present at every religious meeting, and of receiving, not only for themselves, but also for their children and families, all such instructions in church and school as may be reasonably required, both for their temporal good and for their their eternal felicity.

"ARTICLE 5. The said George Rapp, and his associates, further agree to supply the undersigned severally with all the necessaries of life, as clothing, meat, drink, lodging, &c., for themselves and their families; and this provision is not only limited to their days of health and strength, but when any of them shall become sick, infirm, or otherwise unfit for labor, the same support and maintenance shall be allowed as before, together with such medicine, care and attendance and consolation as their situation may reasonably demand. And if at any time after they have become members of the association, the father or mother of a family should die or be otherwise separated from the community, and shall leave their family behind, such family shall not be left orphans or destitute, but shall partake of the same rights or maintenance as before, so long as they remain in the association, as well in sickness as in health, and to such extent as their circumstances may require.

"ARTICLE 6. And if it should so happen as above mentioned, that any of the undersigned should violate his or her agreement, and would or could not submit to the laws and regulations of the church or community, and for that or any other other reason, should withdraw from the

association, then the said George Rapp, and his associates, agree to refund to him or them the value of all such property as he or they may have brought into the community in compliance with the first article of this agreement, and the said value to be refunded without interest in one, two or three annual installments, as the said George Rapp and his associates shall determine. And if the person or persons so withdrawing themselves were poor, and brought nothing into the community, notwithstanding, if they depart openly and regularly, they shall receive a donation in money, according to the length of their stay, and to their conduct, and to such an amount as their necessities may require, in the judgment of the superintends of the association.

"In witness whereof and in testimony that the undersigned have become members of the same community, upon the conditions aforesaid, they have hereunto severally and each for himself set their hands and seals, on the ninth day of March, in the year our Lord one thousand eight hundred and twenty-seven."

(Signatures.)

This agreement, so written in English and German, was signed on March 9th, 1827, by 522 members of the association.

In 1836, another agreement, written in English and German, and dated October 31st, 1836, was executed by 391 members of the society, *revoking and annulling* the sixth article of the agreement of March 9th, 1827, which had provided for the refunding, to withdrawing members, the value, without interest, of the property or money contributed by them to the society, converting all of the property no matter how derived and all future acquisitions of all kinds into a joint and indivisible stock, and confirming and continuing the remainder of that agreement. A copy of this agreement is "Exhibit D," p. 57, Vol. 1, Record.

The English version of this agreement, not including the signatures, is as follows, viz:

"WHEREAS, The Harmony Society, consisting of George Rapp and many others, now established in the town of Economy, in Beaver County, Pennsylvania, did on the 9th of March, 1827, enter into certain articles of association, of which the 6th in number is as follows, viz: Article of 1836.

"And if it would so happen as above mentioned, that any of the undersigned should violate his or their agreement, and would, or could not, submit to the laws and regulations of the church or community, and for that or any other cause should withdraw from the association, then the said George Rapp and his associates agree to refund to him or them the value of all such property as he or they may have brought into the community, in compliance with the first article of this agreement, the said value to be refunded without interest, in one, two or three annual instalments, as the said George Rapp and his associates shall determine."

"And if any person or persons so withdrawing themselves were poor, and brought nothing into the community, yet if they depart openly and regularly they shall receive a donation in money, according to the length of their stay and to their conduct, and to such amount as their necessities may require in the judgment of the superintendent of the association.

"AND WHEREAS, The provisions of the said 6th article, though assented to at the time, manifestly depart from the great principle of a community of goods and may tend to foster and perpetuate a feeling of inequality at variance with the true spirit and objects of the association:

"AND WHEREAS, The principle of restoration of property, besides its pernicious tendency, is one which cannot now be enforced with uniformity and fairness, insomuch as the members of the association, in the year 1816, under a solemn conviction of the truth of what is above recited, did

destroy all record and memorial of the respective contributions up to that time:

"And Whereas, Continued happiness and prosperity of the association, a more intimate knowledge of each other, have removed from the minds of all members the least apprehension of injustice and bad faith:

"Now Therefore, Be it known by these presents that the undersigned, with a view to carry out fully the great principles of our union, and in consideration of the benefits to be derived therefrom, do hereby solemnly enter into covenants, and agree with each other as follows:

"1st. The said 6th article is entirely annulled and made void, as if it had never existed; all others remain in full force as heretofore.

"2nd. All the property of the society, real, personal and mixed, in law or equity, and howsoever contributed, or acquired, shall be deemed, now and forever, joint and indivisible stock. Each individual is to be considered to have finally and irrevocably parted with all his former contributions, whether in land, goods, money or labor; and the same rule shall apply to all future contributions whatever they may be.

"3rd. Should any individual withdraw from the society, or depart this life, neither he in the one case, nor his representatives in the other, shall be entitled to demand an account of said contributions, whether in land, goods, money or labor, or to claim anything from the society as matter of right. But it shall be left altogether to the discretion of the superintendent, to decide whether any, and if any, what allowance shall be made to such member, or his representatives as a donation.

"Invoking the blessing of God on this sacrifice of all narrow and selfish feelings to the true purposes of the association and to the advancement of our own permanent prosperity and happiness, we have signed the foregoing in-

strument and affixed thereunto our respective seals, at Economy, this 31st day of October, 1836.)

(Signatures.)

George Rapp, the founder of the society, continued until his death, in 1847, to be its head or superintendent and to rule and govern it. After his death another agreement, under seal, dated August 12, 1847, was executed in duplicate by the members of the society,—being Exhibit E, pg. 61, vol. 1, Record,—which was recorded in Beaver county in Deed Book 8, page 121. This agreement was signed by two hundred and eighty-eight members of the society. This agreement—not including the signatures—is as follows, viz:

Article of 1847.

"WHEREAS, By the decree of God, the venerable Patriach and much-beloved founder and leader of the Harmony Society, George Rapp, has departed this life, whereby its members are deprived of his Christian fellowship and religious ministry, and of his superintendence in their temporal affairs, and whereas in consequence of this deeply afflicting dispensation it has became necessary to the good order and well-being of the association that some plan should be agreed upon to regulate its future affairs, promote welfare and preserve and maintain it upon its original basis.

"THEREFORE, Be it known to all whom it may concern, that we, the undersigned surviving and remaining members of the Harmony Society, and constituting the same, do severally and distinctly each for himself covenant, grant and agree to and with all the others thereof, and with those who shall hereafter become members, as follows: That is to say,

"ARTICLE 1ST. We do hereby solemnly recognize reestablish and continue the articles of our association (the sixth section excepted) entered into at Economy on the 9th day of March, A. D. 1827, in the presence of John H. Hopkins and Charles L. Voltz, and the supplement thereto,

adopted at the same place on the 31st day of October, A. D. 1836, in the presence of Charles L. Voltz and William P. Baum, except so far as the same are affected by the death of the said George Rapp, as hereinafter altered or modified, and to this extent we declare the said articles to remain in full force.

"ARTICLE 2ND. We hereby ordain and establish a Board of Elders, which shall consist of nine members of the Harmony Society and their successors, to be chosen as hereinafter provided: John Stahl, John Schnabel, Adam Nachtrieb, Matthew Scholle, Joseph Hoerule, John Eberle, Romelius L. Baker, Jacob Henrici, Johnathan Lenz shall be the first board.

"ACTICLE 3RD. The Board of Elders shall have and exercise the following powers, to-wit: 1st. To regulate and manage exclusively the internal temporal concerns of the Harmony Society, to appoint and remove superintendents in the several departments of industry; to make regulations and give orders in relation to their business operations, and generally to take care that the members perform the duties assigned to them. 2nd. To determine all disputes and misunderstandings amongst the members of the Society; to advise, and if necessary, reprove any member who may be in fault or found delinquent in his duty. 3rd. To admit new members into the Society and to expel them therefrom. New members when admitted shall subscribe this agreement as the evidence of their membership, and of the rights acquired by and the duties imposed upon them. 4th. To establish regulations for the maintenance and improvement of the morals of the society and for the instruction of its members. 5th. To appoint one or more of its members spiritual leaders and instructions with such authority in relation to church discipline as shall be conferred by the board. 6th. To remove from the Board of Elders and to declare his seat vacated, also to remove from office either or both of the trustees hereinafter appointed for the

management of the external affairs and their successors in office. 7th. To fill all vacancies in the Board of Elders occasioned by the death, resignation or removal from office of any of its members and their successors, and so as often as a vacancy shall occur, to fill all vacancies in the office of trustee, when either or both of the trustees or their successors shall die, resign his office, or be removed from the same, and so often as a vacancy shall occur. 8th. The concurrence of six members of the Board of Elders shall be deemed the act of the board and a legal exercise of any of the powers hereinbefore conferred on the said board. 9th. A record book shall be kept in which the Board of Elders shall enter all proceedings that they shall consider of sufficient importance to be preserved. In all controversies, judicial or otherwise, in which the society or any of its members may be a party, such record shall be full and absolute evidence of the facts and proceedings therein contained and the affirmation of any elder shall be competent evidence of the identity of the said record.

"ARTICLE 4th. We do further ordain and establish a Board of Trustees for the exclusive management of the external business and affairs of the society, which board shall consist of two persons, who shall be members of the Board of Elders, and their successors who shall be appointed as hereinafter provided. Romelius L. Baker and Jacob Henrici shall be the first Board of Trustees.

"ARTICLE 5th. The said trustees shall jointly and severally have and exercise the powers following, to wit: 1st. In their own names or that of either of them, or otherwise, to purchase and sell, deal, barter, exchange and traffic, make all contracts and bargains in the prosecution of the business, to invest the funds in stocks and other securities, and make transfers and assignments, to collect debts, receive and pay out moneys, settle claims, compromise disputes, institute legal proceedings, appoint and dismiss agents, clerks and attorneys in fact, and at law,

and generally to transact all the external business affairs of the society. 2nd. To make donations to seceding and excluded members and to the representatives of those who are deceased and for such benevolent and charitable purposes as they may deem prudent and fit. 3rd. The said trustees shall have power jointly to purchase real estate in their own names and also in their joint names to grant, bargain, sell and convey all or any of the lands and tenements now or hereafter owned by or belonging to the said society, and for this purpose to execute deeds of conveyance in fee simple or otherwise in their joint names, but the proceeds of all such sales shall be held in trust for the society. 4th. For the purpose of providing an effectual and convenient remedy in law for all injuries to the property of the said society, real and personal, by tresspass, ouster, detention, conversion or otherwise. The said trustees are hereby invested with the rights of possession, entry and action in their own names as fully and to all intents and purposes, as do and may exist in the said society, and to effectuate this object more completely and in consideration thereof, we grant and transfer to the said trustees all such title and interest in the said property as shall be necessary therefor. The proceeds of all suits to be brought shall be in trust for the society. 5th. The powers hereby vested in said trustees shall extend to and embrace all the property of said society, real, personal or mixed, whether standing or held in the name of the late Frederick Rapp, the said George Rapp. or in any other name or form whatsoever.

"ARTICLE 6th. It is hereby distinctly and absolutely declared and provided that all the property, real, personal or mixed, which now or hereafter shall be held or acquired by any trustee or trustees or person under them, is and shall be deemed the common property of the said society, and each trustee now or hereafter appointed, hereby disclaims all personal interest in the present resources and future earnings of the society, other than that of a member there-

of, according to the articles of association hereby re-established and continued, and according to the present agreement.

"IN WITNESS WHEREOF, We, the undersigned members of the Harmony Society, who constitute the said association, have, to these articles executed in English and in German, hereunto set our hands and seals at Economy, in Beaver County, this 12th day of August, A. D., 1847.

(Signatures.)

(Certificate of Acknowledgment.)

The Article of 1836 is the only material article bearing upon the property rights of the plaintiffs; while the articles of 1805, 1821, 1827 and 1847 are material in considering the character of the trust, the purposes and principles of the Society, &c.

System of Government.

The above articles show that the Society was governed by a single patriarch until the death of Father Rapp in 1847, when a Board of Elders, with the same autocratic dominion, possessing absolutely the powers of self-perpetuation and the sole right to elect members into the Society, was introduced, thus continuing the patriarchal system as heretofore and down to the date when the present complainants allege the society was dissolved, or should be dissolved.

The society is an unincorporated association, holding lands, tenements, and personally in perpetuity; governed by an oligarchy, and founded upon a sytem of community of property, which under the article of 1836 all members were equal and joint owners thereof. This association was neither created or at any time in its history became, a religious, charitable or scientific association. From a community originally creating and depending upon the products of their own labor, the society later became, according to complainants construction of the evidence, a mere trading partnership, though still continuing to maintain the oligarchical management until the year 1894, when steps were taken that

apparently destroyed the government of the society as laid down in the articles of association, and made the few surviving members the joint owners of stock in a purely commercial enterprise, which will more fully appear in the history of the society following.

Gradual Changes.

After the society settled at Economy it built a large town; the property extended along the Ohio River for a distance of about three miles, and back a distance of, perhaps, a mile, comprising over three thousand acres of very rich soil and heavily timbered land. It is located about 18 miles below Pittsburgh on the eastern shore of the Ohio river, and today it is deemed the most valuable town site within fifty miles of Pittsburgh. Hundreds of wooden and brick residence were built; also warehouses, grainaries, barns, silk and woolen mills, saw-mills, flour mills, and numerous shops for manufacturing shoes, clothing and other necessities of life. Agriculture in its broadest sense largely occupied the members for many years; stock raising and dairy produce were also important items. Later on the profits of such joint labor were invested in valuable stocks and bonds; then the investments went into outside industrial enterprises, and gradually the trustees, whose powers, though defined, became absolute, in the sense that the form of government provided no practical curb on their operations, began entering into numerous business enterprises owned wholly by the society in Beaver County or adjoining counties, followed finally by becoming silent or active partners in numerous manufacturing concerns, railroads, cutlery works, coal companies, banks, &c., throughout Western Pennsylvania. The complainants believe that herein began the first radical departure of the society from its scheme of communism, based on the individual labor of its members. As the membership decreased the wealth multiplied, and so rapidly did the original members of the society die that in later years it became the custom of the society to replenish its decreasing

ranks by electing new members; this was absolutely necessary, as the society, being a celibate one, its ranks could only be maintained by calling in new members. The failure of the Board of Elders to elect new members, whatever the desires of the members not on the board, meant death to the society as a communistic association.

Radical Change

On January 1st, 1890, the Society had about the average number of members of the few preceding years. Jacob Henrici was Senior Trustee, having been elected in 1847; Jonathan Lenz was Junior Trustee, elected in 1867. Three members of the Board of Elders died in the beginning of January, 1890; among them Mr. Lenz, the Junior Trustee. These vacancies were not filled by a vote of the members of the Society, or were their successors elected from the members of the Society itself, but the remaining members of the Board of Elders, it is alleged, elected John S. Duss, Jacob Nicklaus and Herman Fishern, three employes of the Society who were on the pay roll up until the date of their selection. Mr. Duss' history and antecedents are referred to in the argument. The defendants alleged that these three persons were legally elected, becoming members of the Board of Elders and of the Society the same day. Such a proceeding had never occurred before. The Board of Elders, under the Article of 1847, had the sole right to elect members into the Society; but the evidence seemed to show that applicants for admission were expected to serve a year's probation before formally entering the Society. While it seems to be true that this self-perpetuating Board could elect to vacancies in the Board whom they pleased in the society, yet never before had they gone over the heads of the members to select outsiders for the Board. Moreover, the Complainants contend that Mr. Duss was never legally elected, irrespective of the violence done the customs of the society in the manner alleged, because the Board which is alleged to have elected him was not composed of six legal

members, the number required to make an election valid.

Three weeks later, on February 13th, 16 new members were elected, including Susie C. Duss, the wife of J. S. Duss. About July 1st, Ernest Wolful, a comparatively young man who had succeeded Lenz, a Junior Trustee, died suddenly Mr. Duss was elected by his colleagues to fill the vacancy. Shortly thereafter the said Duss and his wife, and two children, took up their residence in the Great House. This was the first time since the introduction of celibacy, in 1807, that a Trustee with a wife and children resided in the Great House and presided over the affairs of the society.

Teed Mission.

It was at this time that some members of the society became agitated over the frequent visitations of Dr. Cyrus Teed; he obtained large sums of money from the trustees, and gradually introduced many of his male and female followers into the town of Economy; some took up their residence in the Great House with Mr. Duss and the aged trustee Henrici, others sought employment in the town. A female disciple of Teeds, on one occasion, preached in the society's church, and Mr. Duss had to maintain order; a large and expensive house was built on the outskirts of the town, which some of the society's members say was intended for Teed's colony, though the master found it was erected for the laborers in the saw mill. Trustee Duss visited Teed's abode in Chicago, on one occasion leaving there a female member of his own household. Whatever the meaning of this invasion it showed the presence of designing people, whose presence was welcomed by one or both trustees. The master states, page 284, in his opinion, that no evidence was offered to prove the character of Cyrus Teed, in this he is mistaken, for he expressly refused to admit such testimony. Vide, page 517, Vol. 2, Record. The present bill admits that the alleged plan to introduce Dr. Teed and his followers into the society was frustrated or abandoned, and therefore the matter is of no moment in the case as at stands be-

fore the present tribunal, except as showing the conditions of the society at that time, and the assignment of error relating thereto is not for argument. The testimony on this subject is found on the following pages of Vol. 2, Record, to-wit: 517; 629–30; 875; 914 to 917; 819 to 823.

Scandals Occur.

During the period between 1891 and the latter part of 1892 the society was aroused by numerous scandals, wherein the majority of the Board of Elders were alleged to be common drunkards, and several were guilty of adultry, and other unseemly conduct; stories were in circulation seriously affecting the character of members other than the elders. Of the members shown to have been guilty of habitual drunkenness, of adultry and unseemly conduct, none were expelled or disciplined. One of the members who was particularly active in protesting against the dissipation of certain members was expelled by the Board of Elders as he alleges solely because of such activity. A very large amount of testimony was taken on this subject to prove the abandonment of all the old and rigid rules of the society, the existence and enforcement of which had preserved the society in the preceding years. When young Mr. Duss succeeded Father Henrici as the spiritual and temporal leader of the society he opened the society's wine cellars to the public, later taking out a license in his own name, which occasioned criticism; when he and his wife and two children took up their abode in the Great House it was regarded as a fatal blow to celibacy.

The testimony relating to immoralities and drunkedness is to be found on the following pages of Vol. 2: 487 to 500; 525 to 527; 542 to 554; 558 to 562; 856; expulsion and restoration of Feucht 432 to 434; 469 to 474; 483; 490; 841; 844 to 849; 905–6.

Mortgaging Economy.

On December 22, 1892, the more active members of the society were assembled at a meeting, and Mr. Duss,

with the assistance of his counsel, Mr. Hice, and one J. T. Brooks, notified the members that unless a certain paper were signed the society would be in great peril. Thereupon "Exhibit No. G" was signed by most of the members, several refusing. It purports among other things to give authority to the Trustees to execute mortgages. The evidence shows that at this time a mortgage for $400,000 had been prepared, covering the homes of the members of the Harmony Society and the surrounding lands which comprise the society tract, though no mention of it was made in the alleged power of attorney, or the use to which the money was to be put, which will be referred to later. Three days thereafter, on December 25, 1892, the Senior Trustee, Henrici, died at the age of eighty-seven, and, as it is alleged by complainants, wholly unaware of the fact that he had executed the mortgage referred to.

The next day J. S. Duss was elected Senior Trustee, and Samuel Sieber, the town constable, was elected to fill Duss' place as Junior Trustee; so that both Trustees, who by custom and under the Articles of Association, were the absolute rulers of the society, were men who, but a short period before, acted as mere employes of the society; and as Mr. Sieber, the new Trustee, had a wife, these occurrences excited comment among the old members of the society. This seems to have been the culmination of a series of troubles that led to radical action on the part of the major portion of the old and intelligent members of the Harmony Society.

Proceedings for Dissolution by members of the Society.

On the 14th day of February, 1893, the following members of the Harmony Society filed a Bill in Equity in the Court of Common Pleas of Beaver County, Pa., praying for the dissolution of the Harmony Society, viz.: Benjamin Feucht, Rebecca Feucht; Henry Feucht, Margaret Feucht, Tirza Feucht, Dorotha Hoehr, Rebecca Lautenschlager, Edward Kellerman and Christina Rall. The

defendants in said bill being the members composing the Board of Elders and some thirteen others, many of the latter having been admitted into the society since 1890. Of the defendants, the evidence showed three or more were openly in favor of the dissolution of the society, and the evidence further shows that a majority of the defendants within ninety days thereafter acquiesced in the division of the assets, both real and personal, of the society. The complainants by filing the present bill prevented, as they allege, the division of the remainder among the liquidating members who remained at the time said bill was filed.

The evidence in this matter is important for a proper understanding of some of the issues of fact, and the subsequent action of the members. While the Master frequently refers to this proceeding, he, throughout his long opinion, which is filed with the defendants' numerous exhibits, fails to include a copy of this bill in his report, or even give a summary of its more important allegations, although he makes it a means of several important findings of fact.

This bill in equity is marked "Plaintiffs' Exhibit No. 15," and is printed in full on pages 939 to 951; Vol. 2 of record. Exhibit No. 15. Summary thereof.

There is given in said bill a history of the Harmony Society from its foundation down to the year 1847; the personal history of the plaintiffs; the recital of the abandonment of certain customs, and that the principle of celibacy had ceased to exist; that the society is wholly occupied with temporal affairs, and that equality and brotherhood have been put aside and forgotten; that the Board of Elders of the society had the power of perpetuating itself and of filling vacancies among its own number without any of the other members of the society having a voice in their selection; that a majority of the members of said Board of Elders were confirmed and common drunkards and an evil ex-

ample and offense to those who still cling with affection to the primitive form and faith of said society; that John S. Duss and Samuel Sieber, in the exercise of the power and authority of their positions as Trustees, declared it to be their purpose to abolish the pursuit of agriculture and the long standing customs of the society, and that it was their purpose to sell the property and the land of said society and to make the same solely a manufacturing society; that Trustee Duss had recently sold, assigned and disposed of all or substantially all of the valuable dividend paying stocks in numerous companies and corporations, amounting to over two millions of dollars, ostensibly for the purpose of paying debts, thereby diverting the assets of said Harmony Society from the plaintiffs and other members; that said J. S. Duss had in his hands the management of all the business affairs of the society; that his said co-trustee and said elders are entirely under his control and merely act as his servants and agents.

And the prayers for equitable relief *inter alia* were as follows:

That a receiver be appointed by the Court to take charge of and manage the affairs of said society until the winding up of the same and the distribution of its property and assets, real and personal; that the Court order and direct the Harmony Society a dissolution and marshalling of its assets, of its accounts, and a winding up of its affairs, and a division and distribution of its assets, real and personal, either by means of a sale under the order of Court, or in such other manner as may be most expedient to and among the parties equally and equitably entitled thereto, and that the petitioners therein may receive their just share and proportion of said assets, real and personal, in severalty.

Under the above proceedings and the steps taken subsequently to cover up the property, the present complainants allege that the Harmony Society became dissolved in law

and fact, independent of the grounds hereinbefore suggested, to wit: the illegality of the general scheme of government and the manner in which the assets of the society were held and employed in the later years of its life.

The application of the complainants in the above bill, for a preliminary injunction was refused, without any opinion being filed, and the cause was set down for the taking of testimony and final hearing.

Liquidation begins.

Later arrangements were entered into for the purpose of adjusting the claims of various members of the society. With the bill pending for the distribution of the assets, agreements and terms were made with all who asked. The evidence shows that Mr. Duss, the senior trustee, in conjunction with J. T. Brooks, the general adviser, began distributing the moneys of the society upon the basis of about $5,000 per member, irrespective of the length of service in the society, or the real character of the recipient. The facts bearing on this branch of the case are deemed important, and therefore the same are herein set forth:

Joint Stock distributed.

After various negotiations Senior Trustee Duss agreed to pay to each of the five Feuchts $5,600, or a total of $28,600, and to deed them a certain tract of land owned by the society at McKees Rocks, containing 8 acres, and worth about $25,000. It is not true as alleged in the special answer of J. S. Duss that the firm of Shiras & Dickey conducted said settlement, or advised in any way the said Duss, or said Hice, his counsel, but that said settlement was left entirely to the Beaver County attorneys of the complainants for adjustment. *Vide*, 856–7, vol. 2.

Before and after the said Feuchts had received said money and real estate, negotiations were carried on by Senior Trustee Duss, his agent and his counsel, with most of the active members of the Harmony Society, the majority of whom were defendants in the bill brought for dissolution aforesaid. As a result of these negotiations or settlements

the members began departing, receiving on an average about $5,000 apiece. In the quit-claims signed by them, the assets of the society over and above an alleged indebtedness, was put at $200,000, so that each member as he retired, apparently received his per capita share, there being about forty members at this time. Subsequent testimony taken in this case puts the present assets at a very much greater figure.

The money necessary for such a division was partly raised by placing a mortgage of one hundred thousand dollars on the town of Economy and its surrounding fields. *Vide*, page 670, Vol. 2.

The members thus retiring before the present bill was filed included about all the male members of the Board of Elders of the Harmony Society, including the Junior Trustee and about all the men having in charge as foremen or superintendents the various departments of labor and industry, such as farming, wagon shops, saw mill, tailor shops, &c.

Mr. Stickel, whose testimony appears on pages 533-535 of Vol. 2, Record, testified in this case that, before he and his family retired from the society, he had three interviews with Mr. Duss, the Senior Trustee, and that it was agreed that the society be dissolved, and that said Duss referred to the fact that he had devised a scheme while living in Nebraska, whereby he might bring these results about *Vide*, pp. 533-536, 565-568. Mr Duss admits the several interviews, but denied the correctness of Stickel's statements. *Vide*, pp. 872-3-4.

Female Elders.

After all the male members but one of the Board of Elders had departed, the Board was filled with six female members, who comprised the remnant of the society, an event without a precedent in the society, for up to that time a female had never been selected upon the Board. The women thus selected, with the exception of Susie C. Duss, the wife of the Senior Trustee, were either old, infirm or ignorant, or

were women recently admitted into the society and could not talk English.

As stated before, the Master did not incorporate in his opinion a copy of this bill of the members praying for a dissolution, or give a summary thereof. Neither has he set forth a single one of the quit claims or releases of the members which constituted plaintiff's "Exhibits Nos. 1 to 15," and are printed at length on pages 951 to 966, Vol. 2 of Record. As an important part of the history in the case, we print several of these papers, which the complainants have referred to as Deeds of Partition and Liquidation, the ones given representing the several forms used in settling with the members of the society.

Alleged Deeds of Liquidation.

"Exhibit No. 1."

Release or Quit Claim of Hugo Miller.

ECONOMY, BEAVER COUNTY, PA.

I, Hugo Miller, being one of the members of the Harmony Society, at Economy, Beaver County, Pa., also one of the Board of Elders of said society, and being desirous of terminating said membership and withdrawing from said society, declare that I do hereby surrender and renounce forever all my rights, interests and privileges as a member of said society; and further, in consideration of the sum of five thousand ($5,000) dollars paid to me out of the funds of said society by Duss & Sieber, Trustees thereof, I hereby cancel, release and discharge any and all claims whatsoever which I, my heirs or lawful representatives may or could ever have against said society or its property or any part thereof, I hereby declaring all such claims to be fully compromised settled and discharged.

Witness my hand and seal this eighth day of March, 1893. HUGO MILLER,

In presence of

K. RUDOLF WAGNER.

Hugo Miller was the first to receive his money whi
the proceedings were pending for dissolution. Mr. Mill
was at first opposed to the bill, appearing as a defendant i
the answer filed. He was a man of middle age, activ
intelligent, a member of the Board of Elders and filling th
position of foreman of the saw mill, speaking English an
German equally well. He received $5000 "in discharge
any and all claims whatsoever which I, my heirs, or lawf
representatives, may or could have against said society,
its property, or any part thereof, hereby declaring all suc
claims to be fully compromised, settled and discharged.
He was the only member who signed a release like th
above, for before the others received their amounts new an
more carefully devised quit claims were prepared.

The next to retire were Julius Stickel, Pauline Stick
and Bertha Geratch, who jointly executed the followin
paper:

"Exhibit No. 12½."

**Release or Quit Claims of Julius and Pauline Stickel an
Bertha Geratch.**

ECONOMY, PA., March 29th, 1893.

We, Julius Stickel, Pauline Stickel and Bertha Geratch
being each a member of the Harmony Society at Economy
Beaver County, Pa., and being desirous of terminating sai
membership and withdrawing from said society, do declar
that we do each hereby of our own wish and purpose, sur
render and renounce forever our membership in and con
nection with said society, likewise all our rights, interest
and privileges as members thereof. And further, in con
sideration of the sum of three thousand five hundred do
lars ($3,500) in cash paid to Julius Stickel, for the join
account of himself, said Pauline Stickel and Bertha Geratch
out of the funds of said society, by John S. Duss an
Samuel Siber, Trustees, receipt whereof is hereby acknow

edged, we do each hereby cancel, release and discharge any and all claims whatsoever, which we, or either of us, our or either of our heirs or lawful representatives may or could ever have against said society, or its property or assets or any part thereof; we each hereby declaring all such claims to be fully compensated, settled and discharged. And we do each further agree and declare that we jointly and severally accept said sum of money and declare all our claims against said society compensated, settled and discharged, in full knowledge of the condition of said society as disclosed by the affidavits of Dickson and others filed in the suit of Feucht and others against Duss and Siber, Trustees, in Common Pleas Court of Beaver County, Pa., and that we do each know that said society is the owner of stocks and bonds of the nominal value of several hundred thousand dollars, also of judgments, mortgages and unsold real estate and buildings in Beaver Falls of the nominal value of between two and three hundred thousand dollars, also of certain lands in Warren and Forest Counties, Pa., and in Michigan and in Allegheny County, Pa.

Also that while that it may be that said society may have and be the possessor of several hundred thousand dollars' worth of property after paying all its debts, we are entirely satisfied to accept as our share therein the said sum of Thirty-five Hundred Dollars, and that we, nor either of us, will ever hereafter make any further claim for other or further payment of any sum whether to us, or either of us, no matter what may be the value of the possessions of said society after payment of its debts. We also further acknowledge the cancellation and release without payment of any money thereon, of an account of said society, against Henry Stickel, dated March 10, 1893, amounting to $120.-42, said cancellation and release of said account being a further consideration to us moving, in addition to said Thirty-five Hundred Dallars, in consequence and in con-

sideration whereof, we do each sign this instrument in writing.

Witness our hands and seals this 29th day of March, A. D. 1893.

In presence of
J. T. BROOKS.

JULIUS STICKEL, [SEAL]
PAULINE (her mark. x) STICKEL, [SEAL]
BERTHA GERATCH. [SEAL]

The Stickel release refers to the Feucht Bill then pending in Beaver County, and like the Miller release, no other members signed one exactly similar to it. Julius Stickl, as stated before, alleged that he retired under an express understanding with Mr. Duss that the society's assets were to be divided. Stickel, like Henry Feucht, was very active in his efforts to put an end to the debauchery and turmoil in the society. The evidence nowhere impugns the motive or character of him or his family. Mr. Stickel's testimony appears on pages 521 to 574, Vol. 2.

The next member to retire was J. Jacob Niclaus, another member of the Board of Elders, and an active man in the industrial affairs of the society. He got $5,000. The paper signed by him was as follows:

"Exhibit No. 4."

Release or Quit Claim of J. Jacob Niclaus.

I, J. Jacob Niclaus, a member of the Harmony Society at Economy, Beaver County, Pa., being desirous of terminating said membership and withdrawing from said society, do declare that I do hereby of my own wish and purpose surrender and renounce forever my membership in and connection with said society, likewise all my rights, interests and privileges as a member thereof. And further, in consideration of the sum of five thousand ($5,000) dollars in cash paid to me out of the funds of said society by John S. Duss and Samuel Siber, Trustees, receipt whereof is hereby

acknowledged, I do hereby release, cancel and discharge any and all claims whatsoever which I, my heirs, assigns or lawful representatives may or could ever have against said society by its Trustees, its property or assets, or any part thereof, I hereby declaring all such claims to be fully compensated. settled, released and discharged. And I do further declare that I have accepted said sum of five thousand ($5,000) dollars and have surrendered, compromised, settled, released and discharged all claims that I or my heirs, assigns or lawful representatives have or could have against said society, its Trustees, its property or assets, or any part thereof, (entirely at my own solicitation and without any invitation, request or solicitation so to do by said Trustees or either of them) in the full knowledge of the fact that said society owns in addition to its property at Economy and Leetsdale, several thousand acres of land in Michigan, and in Warren County, Pa., also certain tracts of land in Allegheny County, Pa., also stocks and bonds in various railroad, mining, manufacturing and bridge companies to the nominal amount of several hundred thousand dollars, also various judgments, mortgages and unsold lots in Beaver Falls and New Brighton of the estimated value of several hundred thousand dollars; also, while it may be possible that said society may have a large amount of property after the payment of its debts, I am entirely satisfied to accept as my full share and interests therein said five thousand ($5,000) dollars, and I will never hereafter make any claim for further or other payment of any sum whatever, nor for the delivery of any other property of said society to me, no matter what may be the value of the property and assets of said company after payment of its debts; (all such claims thereto being by me hereby expressly barred and discharged).

Witness my hand and seal this fifth day of May, 1893.

In presence of: J. JACOB NICLAUS.

FREDERICK VIERECK.

The next members to sign a release and get their money and also certain real estate that was set aside in severalty for them, were the five members of the Feucht family, though they did not formally retire from the society until June:

"Exhibit No. 10."

Release or Quit Claim of Henry Feucht, et al.

The undersigned, members of the Harmony Society at Economy, Beaver County, Pennsylvania, being desirous of withdrawing from said society and terminating our membership therein, do declare, that we, and each of us, of our own wish and purpose, surrender and renounce forever, our membership in and connection with said society, as also all our rights, interests and privileges as members thereof; and further in consideration of the sum of five thousand six hundred dollars to each of us in hand paid, out of the funds of said society, by John S. Duss and Samuel Siber, Trustees thereof, the receipt whereof we do each hereby acknowledge, (the aggregate amount being twenty-eight thousand) and the further consideration of a conveyance to us of a tract of eight acres more or less, of land situate in the Borough of McKees Rocks, (late Chartiers) Allegheny County, Pennsylvania, we have released, quit claimed and discharged, and by these presents do each release, quit claim and discharge forever the said Harmony Society, its Trustees and legal representatives and its property and assets of whatever name, real and personal, and wherever the same may be, or be situate, of and from any and all claim and claims, demand or demands, of any and every nature and kind which we or either of us, as members of said society, or personally, have or might or could have or assert or maintain at any time hereafter against said society, its Trustees, or legal representatives, or its property, whether for labor done, deposits, property or funds received by said society from us at any time, or from any other person or persons for us, or either of us, and whether the same were in any way received in trust

or otherwise, so that at no time hereafter shall we or either of us, our or either of our heirs or legal representatives have, assert or maintain any such claim or claims, demand or demands, against said society, its Trustees or legal representatives, or its property or assets, or any part thereof, but thereof and therefrom shall forever be debarred by these presents.

And we and each of us do further declare that we have compromised, settled, released, quit claimed and discharged said society, its Trustees and its property and assets of and from all claim and claims, demand or demands as aforesaid with full knowledge of all articles,articles of associatior, compacts and agreements by and between the members of the society, and any rights we either of us have or might or could have thereunder, and of the property of said society, that in addition to its property at Economy, it owns several thousand acres of land in Michigan and in Warren County, Pennsylvania, also certain parcels and lots of land in Allegheny County, Pennsylvania, and in Beaver Falls, New Brighton and Rochester, Beaver County, Pennsylvania, etc., as also bonds and stocks of railroad, mining, manufacturing and other corporations of the nominal value of several hundred thousand dollars, and divers judgments, mortgages, notes, etc, and that said society may have property worth several hundred thousand dollars, left after the payment of its debts and liabilities and with full knowledge of all these facts, we have each accepted the sums and consideration aforesaid in full satisfaction of any possible claim we or either of us have or may or can hereafter have or assert against said society.

We do also hereby ratify, approve and confirm the articles of agreement, and grant of power to the Trustees of said society, to borrow money therefor, and secure the same by mortgage or mortgages of its property or any portion thereof or otherwise, etc., etc., as contained in the instrument of writing executed by all the then members of the society but

Benjamin Feucht and Rebecca, his wife, and Henry Feucht and Margaret, his wife, dated the 20th day of December, 1892, and recorded in the office for recording deeds, etc., in and for the County of Beaver aforesaid.

In witness whereof we have hereto set our hands and seals this sixteenth day of May, A. D. 1893.

Signed, sealed and de-	HENRY FEUCHT,	[SEAL.]
livered in presence of	MARGARET FEUCHT,	[SEAL.]
M. F. MECKLEM,	BENJ. FEUCHT,	[SEAL.]
	REBECKA FEUCHT,	[SEAL.]
	THIRZA FEUCHT,	[SEAL.]

In so much as the present complainants contend that Mr. Duss was acting as liquidating trustee at the time these members retired, and this plan was checked by filing the present Bill, we call the Court's particular attention to the wording in the above quit claim, where it appears that if Duss should dissolve the society by paying off, from time to time, all the members so that he alone remained, that the above release would be an effectual bar to any further demand against Duss, by the liquidating members who retired, even though he became the self-created survivor, with millions of assets undisposed of. Further comment is necessarily reserved for the argument.

The next member to obtain a settlement was Sigmund Stievafter, who recieved $5,000. He signed a release, "Complainant's Exhibit No. 5," page 956, Vol. 3 of Record: the same being identical with "Exhibit No. 4," above quoted.

The next to settle was Morris J. Fredericks, another member of the Board of Elders, a life long friend of Henrici and Lenz, and of the older and mostly deceased members of the society. He was likewise a defendant in the Bill for dissolution. Mr. Fredericks testified he was offered $2,500 by J. T, Brooks, who was very active at this time in the management of the internal and external affairs of the society, that he absolutely refused to leave unless he got

$5,000, the amount necessary to provide for himself in his declining years. (Vide, pages 589 to 591.) Upon leaving he took up his abode in the Old Man's Home, situate just across the line from the Economy tract, Mr. Fredericks signed a paper marked "Complainant's Exhibit No. 3," page 953, Vol. 2 of Record, similar to "Exhibit No. 4 *ante*.

The next to depart with $5,000 was B. Platz. The evidence indicates that he should have received nothing whatever, unless he was paid on the basis of his share, as the part owner of the property in liquidation, for unlike most of those who retired, he was a drunken and worthless creature. (Vide, page 493, 544, Vol. 2.) He signed a paper marked "Plaintiff's Exhibit No. 2," page 951, Vol. 2 of Record, similar to Exhibit 4," *ante*.

The next two to retire were Christina Hoerer and her son, Leonard Hoerer. The son had been a member of the society about ninety days, and when leaving he received $2,500 and his mother an equal amount. The Hoerers were active, intelligent and industrious. No adequate reason is given for their departure. They signed a paper, marked "Plaintiff's Exhibit No. 7," p. 959, Vol. 2, of Record, similar to "Exhibit No. 4," *ante*.

The next to get a settlement was Elizabeth Sieber, wife of the Junior Trustee. She received $4,000, and then eloped openly with the village blacksmith. Why she should be paid such a large sum of money is referred to in the argument. She signed a paper, marked "Plaintiffs' Exhibit No. 6," page 957, Vol. 2, of Record, similar to "Exhibit No. 4," *ante*, and she apparently also signed "Exhibit No. 12." page 963, ditto.

The next to depart, being the seventeenth in number, was Samuel Sieber, Junior Trustee, who got $1,000; his wife and the blacksmith getting the lion's share. He, with his wife, signed "Plaintiff's Exhibit No. 12," page 963, ditto. The consideration expressed therein, $5,000.

As the Master has found that these large sums of money, and also real estate (given at a time when the society's treasury was practically empty) were mere "donations," authorized by the Articles of Association, we submit as a part of the history of the case "Exhibits Nos. 8 and 9," pp. 960-1, Vol. 2, signed by Lena Fritsch, in October, 1890.

"Exhibit No. 8."

Receipt—Lena Fritsch.

"After having become on the 14th day of February of this year a member of the Harmony Society at Economy, I have this day (October 22, 1890) withdrawn myself, of my own free will therefrom, and have ceased to be a member of said society; have also received this day from Henrici and Duss, Trustees, Ninety-five ($95) Dollars, in order to pay my travelling expenses and such like, which sum is in full of my claims on said society or any member thereof."

Witness: "Lena Fritsch."

"H. Gasser."

"J. E. Hirsch."

"Exhibit No. 9."

Receipt—Lena Fritsch.

"The undersigned hereby declare that she has received from Messrs. Henrici and Duss, Trustees, the sum of Twenty-four ($24) Dollars, for the purpose of an advance to go on a trip, and she promises herewith to repay this sum in case her circumstances in Germany shall make it possible for her to spare this money.

"Witness my hand, this 23rd day of October, 1890."

Attested by "Lena Fritsch."

"J. E. Hirsch."

At the time Lena Fritch departed in 1890, the complainants do not contend that the scheme of liquidation was then being carried out, but that the same took form in the

beginning of the year 1893. The Court's attention is called to the sums paid under these two receipts. The latter receipt for $24 being advanced on a promise that it be repaid in case it were possible after she, the retiring member, reached Germany. The wording of this receipt is important. The evidence shows that with one exception before Mr. Duss began his settlements with the members of the society in 1893 that the usual sum paid retiring members, if they were paid at all ranged from $10 to $25. *Vide*, Hice, 743, Schwartz, 401, Fredericks, p. 593, Vol. 2.

Numerous deaths. No new member elected.

From the year Mr. Duss entered the society in 1890 down to December 5, 1898, a large number of deaths occurred in the society, eighteen in all, as follows: Worth, an elder; Kerschbaum, an elder; Fishern, an elder; Henrici, senior trustee; Lauppe, an elder; Scheid, an elder; Beck; Hoehr; Wolfangel; Hermansdorfer, an elder; Diem; L. Wolfangel; Lautenschlager; Reithmueller, junior trustee and Kellerman. These, with the seventeen who retired, as before stated, made a total change by death and settlements of thirty-five, practically the whole society as a going organization, for there now remains only about eight persons, a number insufficient to fill the Board of Trustees and Board of Elders. But two men remain, Mr. Duss and one Franz Gilman, the latter practically an imbecile. On page 576, vol. 2, he testified that his duties on the Board of Elders "was obedience," and the evidence shows that he had no conception of the duties on the Board of Elders. The remaining members are Mrs. Duss, wife of the senior trustee, and five other women, but one of whom can speak English, and two are practically bedridden. It is admitted that Mr. Duss at the present time is the only one capable of transacting the external and internal business affairs of the society. *Vide*, page 699–700; 773.

Not a new member has been elected since March 14, 1893, when Leonard Hoerer was admitted, and ninety days

later left with $2,500, as the expressed consideration of his quit-claiming in his own behalf and that of his heirs, all his rights in the property of the society. Why no new members were elected in view of the deaths, retirements and the character of the remaining surviving members is of necessity reserved for the argument.

Alleged Bank conspiracy and financial matters.

At this point in the history of the case it becomes necessary to refer to certain financial transactions growing out of the wrecking of the Economy Savings Institution, a private partnership bank, located in the town of Beaver, Beaver County, Pa. When organized in the year of 1868 it had as partners Henry Hice, John Reeves, H. T. Reeves and the trustees of the Harmony Society; the latter then owning seven-tenths of the stock.

Nearly one-third of the Master's Report is devoted to financial matters and complicated exhibits growing out of the operation of this bank; his position being in line with the arguments and attitude of defendants' counsel, and we deem it important to briefly state what, it seems to complainants, are the facts necessary to consider therein in order to avoid unnecessarily putting upon the present Court an entirely unnecessary burden. The Economy Savings Institution became the recipient of over a million of dollars of deposits, received from a large number of individuals and corporations. Henry Hice, the attorney for the society, became the president of this bank, and continued apparently throughout as such officer. H. T. Reeves vice-president, and John Reeves was its cashier. Messrs. Hice and Reeves were also interested with the Trustees of the Harmony Society in a file works and in a cutlery works in Beaver county and were the active officers in the latter concerns. The business of manufacturing files, cutlery, &c. did not prove successful. As a result from time to time Hice and Reeves, as the officers of the bank, deliberately took, or permitted to be taken, every dollar of the deposits, amounting to over

one million of dollars, and sank it in these manufacturing concerns. They were practically maker and payee in these transactions. Messrs. Hice, Reese and the Master call this misappropriation of the depositors money by the modern term "overdrafts." What such transactions really were is necessarily reserved for the argument. There is no evidence that Father Henrici, the aged senior trustee, was an officer of any kind in these several concerns and it is doubtful if he, in his latter years, understood what was going on. *Vide*, pages 27–28, vol. 2½ Record. Mr. Hice testified that Mr. Henrici insisted on the manufacturing concerns continuing even at a loss in order that the men might be employed, and he, Hice, objected because the running up of a surplus stock of files would lead to their deterioration by rusting, &c. *Vide*, page 712-713, vol. 2.

Conversion of Joint Investment Securities.

In the fall of 1891 Mr. Duss admits he knew of the real situation at the bank, *vide*, page 894, vol. 2, but made no efforts to close the bank, but continued to permit deposits to be accepted, in violation of the Act of 1889. In the fall of 1892 when the leading members began making inquiry about the financial condition of the society the first steps were taken to meet the situation. Within the next three months after December, 1893, Mr. Duss placed a mortgage of $400,000 on the Economy tract of three thousand acres, and disposed of practically all of thirteen hundred thousand dollars of endowment or trust funds, representing the savings and investments of the members of the Harmony Society for nearly one hundred years. The evidence fails to show that in the execution of the mortgage or in the sale of these investment stocks that a single member of the society, other than Mr. Duss and his outside colleagues had any knowledge. The society had a floating indebtedness of only about three hundred thousand dollars, amply secured. Of the trust funds converted over, $1,200,000 went into the despoiled bank, and there is no proof that the members of

the society were aware of this liquidation by its trustees, or that the society was made to pay the entire indebtedness of Messrs. Hice and Reeves, the executive officers and managers of these losing concerns. The complainants contend that a receiver should have been appointed for the bank, file works and cutlery works, and the losses properly ascertained and the society made accountable according to law, so that the members would be protected and the losses properly apportioned, thus saving not only some three hundred thousand dollars due from Hice and Reeves, but having passed upon the question whether they were not really liable for all, or the greater part of these losses. These bank officers made, or permitted to be made, absolutely false and misleading reports to the State Department, *vide* page 14–15, also page 28–29, vol. 2½ Record, and as Henrici was dead when the present cause was heard before the Master, their assertions while on the witness stand, should, in view of their sworn mis-statements, have been rejected by the Master, unless otherwise supported; yet the testimony of Messrs. Hice and Reeves in this case is given full credit in every instance. As stated before, Duss instead of having a receiver adjust the affairs of these outside concerns, saw fit to act on his own motion, or under the suggestion of Mr. Hice, or Mr. Brooks, so that practically the entire investment fund, designated as the joint and indivisible property of the members of the Harmony Society, was diverted by him either illegally, or in the position of unauthorized liquidating trustee. The meeting of these exigencies for which he had ample time, both Mr. Duss and the Master apparently set up as the principal answer to the numerous allegations of the present complainants that the residue of the assets of the Harmony Society have been preserved for Mr. Duss' sole benefit.

Index. The testimony relating to this Bank, the Cutlery works and File works is to be found on the following pages of the record: Duss, 420; 894 to 900; Brooks, 644-5;

674 to 676: Hice, 712-13; 738; 745; 759; Dickson, 793-4; Vol. 2. Also Reeves, pages 1 to 24; Morrison, pages 24 to 29, Vol. 2½, Record.

Notice of *lis pendens.*

In September, 1893, the present Complainants caused notice to be sent to Mr. Duss, Senior Trustee, that any further disposition of the Society's stocks, bonds or real estate would pass no title. *Vide*, Hice, page 761, Vol. 2 of Record. Shortly after this notice the final steps were taken in the judgments of the Complainants, to wind up the Society and place its remaining property in such shape that the survivors of the Society, be they one or more, would be in a position, if not enjoined, to become the owner of securities, so controlled, that no one would ever be able to trace them, or follow them when converted into money.

Union Company, alleged final act of liquidation.

This brings the history of the case to the recital of the formation of the Union Company and its present relation to the defendants in this proceeding. It is one of the most important questions in the case, bearing as it does on the question of dissolution. The Court below sustained the Master in finding that the Society was not dissolved, and gave this as a reason for not passing upon the ownership of the assets in case of dissolution; in this the learned Judge indirectly reverses the Master who made his Report in such a way as to practically give the property over to the survivor or survivors of the Society, be it Duss or some one else.

The Union Company was organized when the membership of the alleged Society had been rendered by death, settlements and the failure to elect new members to two or three men and half a dozen women. Notice having been received of the pending suit by the present Complainants no one else was apparently permitted to leave, (*Vide*, Duss, page 101, Vol. 1).

This Company was very quietly organized, under the

General Corporation Act of 1874, by Attorney Hice, his two sons, W. S. Morrison and W. J. Stuart on January 17, 1894, Plaintiff's "Exhibit No. 27," page 967, Volume 2 of Record. Its capital stock was fixed at $5,000 with 100 shares of the par value of $50, and the application stated that the "said corporation is formed for the purpose of the purchase and sale of real estate, or for holding, leasing and selling real estate" and that "the business of said corporation is to be transacted in the Borough of Beaver, County of Beaver, State of Pennsylvania." This application was granted by the Governor, and on the 16th day of February, 1894, it was recorded in Beaver County.

The evidence shows that the ulterior purpose of organizing the Union Company in the above manner was to annoy the present complainants, and at the same time affect the public, particularly the State of Pennsylvania, in the name of which the escheat proceedings had been commenced, or were contemplated. J. T. Brooks, one of the principal witnesses for the defendant, said on page 645, Vol. 2 of record, that the Union Company was organized on his recommendation "to facilitate the sale of the property from time to time whenever we should get ready to sell," and "to remove the property in a sense out of sight and out of mind so far as the question of escheat was concerned." No sooner was the charter obtained on the application of Hice *et al* than simultaneous steps were taken to increase the capital stock of the Union Company to $400,000, and to have the Trustees of the Harmony Society convey all the land of the society to the Union Company in payment of the increase of part of the capital stock.

Plaintiffs' "Exhibit No. 28," page 969, Vol. 2, is the authorization of the increase of capital stock, and the stockholders who voted were the same individuals who appeared in the application for the charter.

Plaintiffs' "Exhibit No. 29," page 972, Vol. 2, is a copy, dated April 12, 1894, of the Treasurer's return of in-

ise of capital stock from $5,000 to $400,000—"said ad-onal stock ($395,000) being issued for real estate situ-in Allegheny and Beaver counties, Pennsylvania, which been conveyed to the company.

Defendants'. "Exhibit H," page 112, Vol. 1 of record, ports to be an authorization by the members of the Har-ay Society to the Trustees thereof to convey all the ds of the society to the Union Company in considera-n for stock to the extent of three hundred ninety-seven usand and five hundred ($397,500) dollars, out of a total four hundred thousand ($400,000) dollars."

The preamble to this document contains a statement t the society "is now indebted to various persons in ge sums of money, payment of a part of which may be manded at an early date." This statement is incorrect, under the evidence at this date the society had but one parent creditor, represented by the McCullough mort-ge, which Mr. Brooks, counsel for the society and coun-for the lender, had placed upon the property, against ich debt the alleged society had personal assets suffi-nt to pay. Next comes a whereas in said exhibit as lows:

> "WHEREAS, The trustees of said society are advised that a suit is about to be brought against it in the name and on behalf of a large number of persons who claim to be lawful heirs of certain deceased members of said society, the object of said suit being to compel the society to pay large sums of money to said persons as portions of the society's property claimed to be due to said persons as heirs of such deceased members, which claims we regard as totally unfounded."

This averment is important as showing the knowledge the pendency of the present proceedings and a desire to ft ground before the legal proceedings began.

Then said exhibit recites the advantage of having the land of the society represented by capital stock of an incorporated company, so that the same might be disposed of more readily: then follows the consent and request of the members that J. S. Duss and G. Reithmueller, Trustees, convey to the Union Company "all the lands, tenements and hereditaments, situate in Allegheny and Beaver Counties, Pennsylvania, now owned by the society, to the end that all said lands, tenements and hereditaments may be owned, held and managed by said incorporated company, and be sold and otherwise disposed of from time to time, in pursuance of proper corporate action, as may be determined by the Directors and officers of said incorporated company." This paper was executed April 11, 1894, and contains in addition to the individual signatures and acknowledgements of the surviving members, also the separate acknowledgements of Johanne Hermansdoerfer and Susie C. Duss, wives of two of the members of the society, indicative apparently of the fact that individual ownership and dowry rights were now recognizable in the property.

In pursuance of this authority the property of the society was conveyed by the Trustees to the Union Company, which land not only included the home of the society, with its mills, factories, shops, the separate home of each member, the residence or Great House of the Trustees, the society's house of worship, and the gardens and surrounding farms, all these passing to this corporation for the purposes of sale as its Directors might determine, and the property conveyed also included the society's cemetery, containing the remains of Fathers Rapp, Baker, Henrici and Lenz, and of the other deceased members of the society since 1825; which burial place also contained the bodies of the parents, the brothers and sisters or other near kinsmen of the present complainants. In said deeds to the Union Company the society's property in the Town

of Beaver and all that in the County of Allegheny is likewise included.

The secrecy of these proceedings prior to the time the present complainants filed this bill resulted in the allegation in Paragraph 20th thereof that the conveyance to the Union Company was without the consent or knowledge of the members, other than the Trustees and Mrs. Duss. In this they were mistaken, having no knowledge of "Exhibit H." It is therefore a fact that the conveyance of the society's home to the Union Company was authorized so far as the personal assent of the members could bring this about.

As the results of the transfer of all the property by the surviving members of the society to the Union Company the said members became merely tenants at will of the Union Company, the authority having been given to make a conveyance to the corporation, contemplating and directing the sale of said real estate, it became possible and was the duty of the directors of said Union Company to sell the property, thus turning the realty into money, so that the joint and indivisible property of the society became personalty, as it is necessarily to-day, when represented by the capital stock of the Union Company. The alleged existing communistic society being without a home and not bound by the Articles of Association to remain anywhere in particular, either within the State of Pennsylvania or even in the United States, is in a position to depart at will, taking with it in cash or stock certificates the very property now in controversy, all of which is referred to in the argument.

All the evidence bearing on the formation of this company, its purposes and its acts, is printed in the present Record and for the purpose of the convenience of the Court is separately indexed in the brief.

The manner in which the Union Company was reorganized, how the stock was transferred and paid for appears fully in the testimony of its Treasurer and Secretary,

James Dickson, pages 774 to 792, Vol. 2, of Record. The Union Company, instead of having its place of business in Beaver, Beaver County, after re-organization changed its office to the City of Pittsburgh, County of Allegheny, where its directors meet, composed of two of the surviving members of the Harmony Society, and three non-members, of whom Mr. Dickson, the Secretary and Treasurer, is one. Mr. Dickson testified that the directors of the Union Company managed all the affairs of the real estate covered or controlled by it, and that the Board of Elders have no control over it or the management of results of the real estate of the Union Company (page 791, Vol. 2).

The creation of this company, it is admitted, is wholly due to plans devised by Duss and Messrs. Hice and Brooks —the surviving members assenting thereto by signing "Exhibit H," *ante*. The testimony of the founders of this company indicates that one of the controlling reasons was to defeat any proceedings attacking the title by escheat or otherwise. Mr. Duss testified he was advised that by removing the title of the society and covering it up with that of the corporation it would put an end to escheat proceedings (page 878, Vol. 2). Mr. Brooks testified that the Union Company would put the title in a safer condition and "put the property out of sight," so far as an escheat was concerned (page 695, Vol. 2). Mr. Hice testified that the escheat proceedings were taken into consideration when the application for the charter was made in such a way as to avoid publicity (page 760, Vol. 2).

Why, if the trust were legal, and dissolution had not been effected or contemplated, an escheat was feared, is, necessarily, reserved for the argument.

Index to the Testimony Relating to Union Company.

Duss, pages 387 to 394; 409-410; 420 to 425; 598-600; 603-4; 878.

Brooks, page 645-6; 694-5

Hice, pages 731 to 733; 759 to 761.

Dickson, pages 774 to 791.

"Exhibits H," page 112, Vol. 1; "Exhibit No. 27," Charter application, page 967; "Exhibit No. 28," Increase of Capital Stock, page 969, Vol. 2.

Individual Life Insurance by Duss, Trustee.

It was shown in the evidence of this case that Mr. Duss, after the conveyance of the society's property to the Union Company, took out life insurance to an amount of upwards $100,000. As testified that the Harmony Society was the beneficiary; on subsequent and further cross-examination it was shown that this was not the case. One policy for $15,000, "payable to Susie C. Duss, her executors, administrators or assigns"; another policy for $30,000 on the life of J. S. Duss was payable to his executors, administrators or assigns"; another policy in the sum of $20,000 on the life of J. S. Duss was payable at his decease to his legal representatives or assigns".

Before the case closed before the Master, all these policies, by the consent of the beneficiaries were made payable to the Harmony Society. As originally issued, his wife and his two children, the latter not members of the society, were the beneficiaries under these policies. The complainants contend that, as Mr. Duss was then acting as a liquidating trustee, the policies were intended for his personal benefit and that of his family pending dissolution, otherwise, as the premiums were paid out of the society's funds, the transaction would have been a fraudulent one. The testimony bearing upon the manner these policies were taken out, appears in full on pages 604 to 609; 612-13; 879 to 881, Vol. 2 Record.

Economy filled with non-members.

It also appeared in evidence that shortly before and after the Union Company took possession of the town of Economy, its numerous houses were rented to hundreds of outsiders, including over twenty of Duss's relatives and connections. (*Vide*, pages 614 to 620), and that the common store, where the members got their supplies, was rented, Duss distributing the supplies thereafter from his own house to the members, instead of the same being managed by the board having charge of the internal affairs, and that the saw mill, hotel, factories and shops all passed into the hands of outside people, who conducted their business independently of the society's, and as tenants of the Union Company, so that the few remaining members have become undistinguishable in the old town of Economy.

The above statement of facts, including exhibits, questions of law as relating to facts and circumstances, represent the condition of affairs when the present complainants instituted these proceedings. The *res gestae* in this case are numerous, intricate and important; it being particularly desirable, from the view taken by complainants's counsel, that this Court, confronted with a voluminous record, numerous questions of law and fact, should have laid before it the various facts that, taken collectively, create the fabric of this case, and which complainants say has been so disregarded by the Master, and which occasioned the 48th assignment of error, page 371, Vol. 1. Therefore, the present history of the case includes many details that, taken together, comprise conditions very essential to the proper determination of facts involving questions of good faith, facts of commission and of omission, from which conspiracy may be inferred or fraudulent designs ascertained.

Complainants' bill.

Up to the date when notice was given that the bill was contemplated, neither Christian Schwartz, or any of the other complainants had ever brought or threatened suit against the Harmony Society, or any of its surviviving members. Mr. Schwartz, Mr. Koterba and the other plaintiffs at different times visited their relatives in the society when it was conducted by Trustees Henrici and Lenz and the elder members. When the members of the Harmony Society filed a bill for dissolution and proceeded to distribute the assets of the society among themselves and the remaining survivors conveyed the rest of the property to a private business corporation the situation necessarily compelled them to act at once or not at all. Hence this proceeding.

It is unnecessary to repeat at length the allegations of the complainants, for they are based upon substantially the facts hereinbefore recited. That this Court may have before it in a condensed form some of the more important averments of the complainants we print paragraphs 25 and 26 of said bill:

> "25th. That recently said Harmony Society has become dissolved as aforesaid, that all of its purposes and practices established as aforesaid by the founder of said society, and by the ancestors of your orators, have been abandoned; that its chief assets, consisting of bonds, stocks and other securies, and the town of Economy, with its buildings and the adjacent lands of said society, consisting of some 3,000 acres, and which constituted the basis of organization and business of said society, have been sold and conveyed away by the said Duss as aforesaid in fraud, however, of the rights of your orators and their co-tenants, and that by reason of the facts hereinbefore set forth your orators and the said last members, except the said Duss and wife, are now tenants in common of all of said lands and

tenements. and entitled to partition thereof, in proportion to their respective interests."

"26th. That for some time past the members of said Harmony Society have been retiring therefrom and have received the amount of their interest in said association in the land or money, or both, the land being set apart in severalty to them, and have released all of their rights and interests in said association in consideration for such payment or conveyance to them, and that by said retirement and withdrawal the membership of said association has been reduced to the persons hereinbefore named members, that by common consent this association has ceased to exist as an association, and that if the property thereof has ever been impressed with a trust (which your orators deny as being contrary to public policy and void in law or equity) such trust has wholly ceased and the assets of such dissolved association have reverted to the donors thereof among whom were the ancestors and intestates of your orators."

Master's Report.

The Master's Report is open to criticism which will be more fully disposed of on argument. It is sufficient to say in this place that he recommends a decree for the dismissal of the bill and imposes the costs upon the complainants first to be advanced by the defendants. The record shows that the Master, on March 15th, 1899, received from John S. Duss, Trustee, his fee fixed in this case.

The appointment of a Master in Equity causes in the United States Court is an unusual proceeding, but his appointment resulted from frequent refusals of Mr. Duss, before the Examiner, to answer questions deemed important by the complainants, so that it was resorted to for the purpose of saving time on arguments on questions certified to the lower court; (an example of which appears on pages 384 to 386, Vol. 2 of record.)

Courts' Opinion.

The report of the Master was sustained by the Court below in a very brief opinion, so that most of the present assignments of error relate to position taken by the Master, which the Court below by sustaining has adopted.

The Court below found that the society was not dissolved and that therefore it was unnecesary to decide where the property of the society would go in case of dissolution.

From the opinion and the judgment of the Court below, assignments of error were presented and allowed, and they are now before this Court for final disposition.

There are a number of minor facts, involving a large amount of testimony, that complainants, while not agreeing with some of the Master's positions, feel constrained not to press, owing to the expense of getting out such a record and because the questions of law and fact already raised are of much greater importance and will occupy all the time that is available for appellate proceedings. It developed at the time the present record was being printed that all the exhibits in the case, numbering nearly 100, had never been filed with the clerk of Court after the Master made his report and filed the testimony of the case therewith. What became of many of these important papers no one has as yet explained. The Master having died and likewise Mr. Dickson, the Secretary of the Union Company, it is probable they, if living, might explain. The "Complainant's Exhibits 1 to 15" are deemed important, but none appear in the Master's report.

The record as now made up, Vols. 1, 2 and 2½, comprise, in the judgment of complainants' counsel, all the evidence bearing upon the assignments of error that the complainants intend presenting to this Court and was printed and the proof read under the supervision of the Clerk of the United States Circuit Court—such arrangements being agreed to by defendants' counsel.

Assignments of Error.

1st. The Court erred in not entering a decree in favor of the plaintiffs and in entering a decree in favor of the defendants.

2nd. The Court further erred in charging the plaintiffs with the costs of the said bill.

3rd. The Court erred in entering the following decree;

"Decree.

"This cause came on to be heard at this term of Court upon the pleadings and evidence and the report of the Master and exceptions thereto, and was argued by counsel;

"And now, this thirteenth day of February, 1899, upon consideration it is ordered, adjudged and decreed that the plaintiffs' bill be and the same is hereby dismissed; and it is further ordered, adjudged and decreed that the plaintiffs pay the costs, including the Master's fees to be fixed *sec. reg.* and which, together with his compensation as examiner, shall be paid to the Master in the first instance by the defendants.—By the Court."

4th. The Court erred in its opinion in stating: "The constitution of the Harmony Society is embodied and the general purposes of the association are set forth in a series of written agreements," and including therein the agreement of 1890 (see "Exhibit F," Record p. 67).

5th. The Court further erred in holding in its opinion filed that the "recited articles of agreement are valid contracts."

6th. The Court below further erred in its opinion as follows:

"Furthermore, it does not appear that any of the persons through whom the plaintiffs claim contrib-

uted any money or property to the society. The Master has found that no such contribution was ever made by any of these persons. The correctness of that finding has not been impeached."

7th. The Court below further erred in asserting as follows:

"The other persons through whom the plaintiffs claim remained with the society and died in fellowship; they thus received and enjoyed all the benefits secured to them by the recited articles of agreement; and therefore no rights enforceable against the society passed from them to their heirs or personal representatives."

8th. The Court below further erred in its opinion in asserting as follows:

"But the hypothesis of dissolution is not wel founded. The proofs show that the society is in full life; there has been no dissolution of the society, either by the common consent of the members or by their acts. The membership, indeed, has become greatly reduced; but the rights of the society as now constituted are as sacred in the eye of the law as they were when the membership was twenty-fold greater. The society as an organization exists in law and in fact. Under the evidence, the findings of the Master on this branch of the case undoubtedly are right; hence the very foundation of the bill fails. The plainriffs do not show that they are entitled to any equitable relief whatever."

9th. The Court below further erred in its opinion in holding as follows in respect to the alleged conspiracy to wreck and dismember the Harmony Society:

"We feel called upon to say that we fully agree with the conclusion of the Master. The acts here principally complained of were, we think, designed not to destroy the society, but to save it from the consequences of business mistakes made by none of the

present officers or members of the society, and for which none of them are at all responsible. The measures resorted to in the emergency which was upon the society were successful in extricating it from great financial peril.

10th. The Court below further erred in sustaining the report of the Master in overruling the exceptions filed thereto by the plaintiffs as follows:

"Third. To so much of his report as finds that the plaintiffs have no interest whatever in the property of the society, and are not entitled to any part or share upon a dissolution."

11th. The Court below further erred in overruling the following exception of the plaintiffs' to the Master's report:

"Fourth. To so much of the Master's report as holds that the agreements of 1805 and 1827 are substantially the same; and that a new plan of goverment by the agreement of 1847 was made necessary by the death of Rapp."

12th. The Court below further erred in overruling the following exception of the plaintiffs to the report of the Master:

"Fifth. The Master erred in not finding that the agreement of 1847 destroyed the communism of the property and the patriarchal form of government provided in the agreements of 1805 and 1827, and substituted therefor a capitalistic system assimilated to the forms usually adopted for the management of capital and its employment for profit under the direction of a directory and presiding officers."

13th. The Court below further erred in not sustaining the following exception of plaintiffs' to the report of the Master:

"Sixth. The Master erred in not finding that

by the agreement of 1847, all who were then members of the society and who afterwards became members of the society, became owners in and to an equal undivided share of all the property of the said society, real and personal, which by the agreement of 1847 was converted into a joint and indivisible fund, and that, therefore, upon the event of the dissolution of the association from any cause whatever, in the absence of provisions in that agreement for the distribution of said fund, the said joint and indivisible fund is to be distributed among all persons dying in the society, and the legal heirs and representatives of those who died in the society.

14th. The Court below further erred in overruling the following exception of plaintiffs' to the Master's report:

"Seventh. The Master erred in not finding that there was no joint tenancy with right of survivorship or tontine system provided for by any of the agreements referred to in the testimony; and in not finding also, as a special fact, that none of the agreements made any provision for a winding up of the affairs of the society, or for a distribution of its proceeds in the event of a dissolution of the said society."

15th. The Court below further erred in overruling the following exceptions of plaintiffs' to the report of the Master:

"Ninth. The Master erred in finding that the plaintiffs' under the agreements hereinbefore referred to have no claim on the property of the society through any of their ancestors."

16th. The Court below further erred in overruling the following exception of the plaintiffs' to the report of the Master:

"Tenth. The Master erred in holding that any

inconsistency exists in the allegations of the 6th and 26th paragraphs of the plaintiffs' bill, and says that the proper construction of the said 26th paragraph is that the trust is contrary to public policy and void in law or equity."

17th. The Court below further erred in overruling the following exception of the plaintiffs' to the Master's report:

"Eleventh. The Master erred in holding that the associates of George Rapp, in the original agreement of 1805, were named and ascertained by the deed of the 6th of May, 1815; and holding that the plaintiffs' objection as to perpetuities are unfounded."

18th. The Court below further erred in overruling the following exception of the plaintiffs' to the Master's report:

"Twelfth. The Master erred in holding that the society as an unincorporated association had a right to take personal property."

19th. The Court below further erred in overruling the following exception of the plaintiffs' to the Master's report:

"Thirteenth. The Master erred in holding that the plaintiffs' are barred by time, assuming the legal inability of this society as an unincorporated association to take personal property."

20th. The Court below further erred in overruling the following exception of the plaintiffs' to the Master's report:

"Fourteenth. The Master erred in assuming that there was no evidence of a conveyance to George Rapp or Frederick Rapp of the funds of the old society, but that they were purchased from outside persons; and also in his conclusion that if the trust was void, that the plaintiffs' are not entitled to

it, but that the same would revert to the grantors or go to the grantee of the trust."

21st. The Court below further erred in overruling the following exception of the plaintiffs' to the Master's report:

"Fifteenth. The Master erred in finding that the various agreements did not create a limited or base fee; and also erred in not holding that the said agreements did create a limited or base fee."

22nd. The Court below further erred in overruling the following exception of the plaintiffs' to the Master's report:

"Sixteenth. The Master erred in finding that no resulting trust existed."

23rd. The Court below further erred in overruling the following exception of the plaintiffs' to the Masters' report:

"Seventeenth. The Master erred in finding a sufficient and valuable consideration by the association to the members thereof for their interest in the property of the said association, because the said agreements disclosed a tenency in common in the property of an unincorporated association incapable of giving or receiving considerations as between the several tenants in common."

24th. The Court below further erred in overruling the following exception of the plaintiffs' to the Master's report:

"Eighteenth. The Master erred in not holding that the scheme of the said association disclosed by its various agreements and its prevailing customs and methods is against public policy, and therefore should be wound up, and the several reliefs prayed for in said bill should be granted."

25th. The Court below further erred in overruling the fol-

lowing exception of the plaintiffs' to the Master's report:

"Nineteenth. The Master erred in finding that the Harmony Society has not been dissolved by the common consent of its members."

26th. The Court below further erred in overruling the following exception of the plaintiffs' to the Master's report:

"Twentieth. The Master erred in finding that the Harmony Society had not dissolved by the abandonment of the purposes for which it had been founded."

27th. The Court below further erred in overruling the following exception of the plaintiffs' to the Master's report:

"Twenty-first. The Master erred in finding that the abandonment of the purposes of the society to cause a dissolution, must be an abandonment by *all* of its members."

28th. (Not for argument).

29th. (Not for argument).

30th. (Not for argument).

31st. The Court below further erred in overruling the following exception of the plaintiffs' to the Master's report:

"Twenty-fifth. The Master erred in finding the election of Duss, Nicklaus and Fishern to the Board of Directors was regular and valid."

32nd. The Court below further erred in overruling the following exception of the plaintiffs to the Master's report:

"Twenty-ninth. The Master erred in finding that Duss did not prevent the admission of new members, as alleged in the fourteenth paragraph of the bill and in not finding that the said Duss and his associates designedly permitted the membership

of the society to run down and diminish in order to vest the property of the society and the control thereof in himself and a few others under his control and dominion."

33rd. The Court below further erred in overruling the following exception of the plaintiffs to the Master's report:

"Thirtieth. The Master erred in finding that the use of the funds of the society to the amount of over a million dollars was an authorized and proper application of said fund, and in finding that the same was not the result of a conspiracy between Duss, Hice and Reeves, as alleged by the 15th paragraph of the bill."

34th. (Not for argument.)

35th. (Not for argument.)

36th. (Not for argument.)

37th. The Court below further erred in overruling the following exception of the plaintiffs to the Master's report:

"Thirty-fifth. The Master erred in not finding that the money represented by the foregoing mortgage was not raised for the purpose of raising money to induce members to retire, and that said money was so used; and in finding that the same was not borrowed for the purpose aforesaid."

38th. The Court below further erred in overruling the following exception of the plaintiffs to the Master's report:

"Thirty-sixth. The Master erred in finding that Duss did not, as charged in the 19th paragraph of the bill, by artifice, misrepresentation, coercion and fraud, induce or force all the active and more intelligent members of the society to withdraw, and that he did not secretly and fraudulently appropriate several hundred thousand dollars of the moneys of

the society, and use it in getting rid of those members."

39th. The Court below further erred in overruling the following exception of the plaintiffs to the Master's report:

"Thirty-seventh. The Master erred in finding that the payments to the retiring members were not made secretly, and that the same were within the powers of the trustees."

40th. The Court below further erred in overruling the following exception of the Plaintiff's to the Master's report:

"Thirty-eighth. The Master erred in finding that Duss protested against the withdrawal of the retiring members, and that the withdrawal of these members was not caused by any scheme or action of Duss, but by the filing of the Feucht bill against the society, and the actions of the plaintiffs in that bill prior to and after it was filed."

41st. The Court below further erred in overruling the following exception of the plaintiffs' to the Master's report:

"Thirty-ninth. The Master erred in not finding that the withdrawal of retiring members was caused by the offers of money made by Duss and by threats and coercions used by him."

42nd. The Court below further erred in overruling the following exception of the plaintiffs' to the Master's report:

"Fortieth. The Master erred in finding that the averments of the 19th paragraph of the bill in regard to the election of women to the Board of Elders and the purpose for which the same was done was not sustained."

43rd. The Court below further erred in overruling the following exception of the plaintiffs' to the Master's report:

Forty-first. "The Master erred in sustaining the allegations contained in the 20th paragraph of the bill in relation to the conveyance to the Union Land Company."

44th. The Court below further erred in overruling the following exception of the plaintiffs' to the Master's report:

"Forty-second. The Master erred in finding that the conveyance to the Union Land Company did not work a dissolution of the society, and that the same did not wholly terminate the existence of said society, not only as to the government thereof by the Board of Elders and by the members, but also as to the ownership of any property."

45th. The Court below further erred in overruling the following exception of the plaintiffs' to the Master's report:

"Forty-third. The Master erred in finding that said conveyance was within the powers and the authority of the trustees or the terms of the trust upon which they held the same."

46th. The Court below further erred in overruling the following exception of the plaintiffs' to the Master's report:

"Forty-sixth. The Master erred in finding that the principle of equality and community of goods had not been abandoned, as charged in the 23rd paragraph of the bill."

47th. The Court below further erred in overruling the following exception of the plaintiffs' to the Master's report:

"Forty-ninth. The Master erred in finding that

the doctrine and practice of celibacy had never been one of the essential principles or doctrines of the society."

48th. The Court below further erred in overruling the following exception of the plaintiffs' to the Master's report:

"Fiftieth. The Master erred in treating the various acts alleged by plaintiffs as constituting dissolution of the society separately and in not considering and passing upon the united effect of all said acts and matters, and in failing to find that in the same when taken collectively, would constitute a dissolution of the society or an abandonment of the purpose of the society."

ARGUMENT.

The questions involved in this cause are based to a large extent upon certain instruments of writing in evidence as follows, viz.:

George Rapp, and with him certain associates, left the Kingdom of Wurtemberg about 1803, and acquired seven thousand acres of land in Butler County, Pennsylvania, and there established a town called Harmony.

The first of the written instruments referred to is dated February 15, 1805, and was executed there. It is printed as "Exhibit A," page 47, and also in the Master's Report, page 128, Vol. 1, of the Record.

This instrument was one of adoption of new members. The community is described therein as "*George Rapp and his associates.*"

In the year 1814 "George Rapp and his associates" removed to Posey County, Indiana, and there established a town called Harmony; and in the year 1815 sold the Butler lands and the town for $100,000.

Another instrument of adoption was entered into, dated January 21, 1821, in Indiana. It is "Exhibit B," printed on page 50, and in the Master's Report, p. 131, Vol. 1. The parties therein are "*George Rapp and his associates*" of the second part, and others, signers of the first part. It is called an "*Agreement, treaty and alliance.*"

In the year 1825 George Rapp and his associates acquired three thousand acres of land on the Ohio River, in Beaver County, Pennsylvania, about eighteen miles below the City of Pittsburgh, and there established the Town of Economy, laid out streets, built a "great house" for Rapp and a large number of substantial brick houses, cultivated farms, established vineyards, made wine, erected woolen mills, flour mills, silk factory and other industries, to employ the labor of members, and to support, maintain and clothe themselves. The title to the lands was taken in (M. R. 142) the name of Frederick Rapp, who on July 20, 1825, executed a declaration of trust that all the property, real, personal and mixed, which then was or which might afterward come into his possession, was the property of the society. In this instrument the name "Harmonie Society" is for the first time used, in a descriptive and informal way.

Another instrument dated March 9th, 1827, was executed at Economy, and is "Exhibit C," p. 52 (Vol. I.), and is printed in the Master's Report, p. 133.

The preamble recites the formation of a community by George Rapp and many others; recites the purposes for its formation and its principles, and also the necessity existing that the condition of membership should be clearly understood, and that the rights and privileges and duties of every individual should be defined.

Thereupon, upon the one part, the signers, citizens of Beaver County, agree with "*George Rapp and his associates*" of the other part upon certain things therein mentioned.

On the 31st day of October, 1836, another instrument was executed. It is "Exhibit D," p. 87, Master's Report 139, Vol. I. For the first time the name "*Harmony Society*" is formally used. The whole purpose of this instrument is to revoke the 6th article of the articles of March 9, 1827, providing for restitution of property to retiring members.

This system of restitution is denounced as a departure from the great principle of a community of goods; the articles of 1836, by way of substitution, convert all the property of the society, real, personal and mixed, and afterwards to be acquired, "now and forever," into "joint and indivisible stock." In no other respect are the prior articles affected.

Upon this agreement the plaintiffs rely, as vesting in the members of 1836 and those becoming members, at subsequent dates, the reversion of property upon the dissolution from any cause of the Harmony Society.

In 1834 Frederick Rapp, the Trustee, died, and an instrument dated July 5, 1834, was executed, reciting his death, and constituting George Rapp the general agent of the society, and defining his powers and declaring his trust for the society.

In pursuance of this instrument, George Rapp appointed R. L. Baker and Jacob Henrici general agents and and trustees for the society.

This instrument is printed in the Master's Report, pp. 143-144-145, Vol. I., and is "Exhibit No. 85."

George Rapp died in 1847, and in consequence of his death an instrument was executed dated August 12, 1847, (Master's Report, p. 146, Exhibit 83; also as Exhibit 'E,' p. 61), expressly re-establishing the provisions of the articles of the 9th of March, 1827, and of 31st of October, 1836, and providing for a management of affairs by a board of nine elders and a board of two trustees,—all being named therein; the Board of Elders to be self-perpetuating; the trustees to be members of the Board of Elders. The trusts for the society are continued.

The next articles in point of date are those of April 30, 1890. ("Exhibit F," p. 67, Vol. I.) They purport to be ratification of acts done by the elders and trustees, and reaffirm the articles of 1847.

There are two additional articles of later date; the first is dated Dec. 20, 1892, intending to give to the trustees power to borrow money. ("Exhibit G," p. 74, Master's Report, p. 437; and the second is dated April 11, 1894, ("Exhibit 80," Master's Rep., 223, Vol. 1.) and intending to authorize sale of all the society property to the Union Land Company,

To the articles of 1827 there are 666 signatures (Master's Rep., 133); to those of 1836 there are 424 signatures (p. 139); to those of 1847 there are 288 signatures (p. 146); those of 1890, 45 signatures (p. 204); the articles of 1892, 33 signatures (p. 213); to the articles of 1894, 18, being all of the membership (p. 222).

The bill in this cause names all the then members, sixteen in all; the record, Dec. 5, 1898, suggests the death of seven of those,—leaving *then* nine members, of whom one or more may have since died.

There being no men left in sufficient numbers to serve, four women were added to the Board of Elders.

Duss (Vol. 2, p. 293) gave the names of the Board of Elders:

Fredericka Muntz,
Regina Lautenslager,
Maria Deim,
Karolina Molt,
Susie C. Duss,
Franz Gilliman,
Conrad Hermansdoerfer,
G. Reithmuller,
John S. Duss.

Of these Reithmuller, Hermansdoerfer, Maria Deim and Regina Lautenslager are dead.

This society so-called is now so far reduced in numbers as therefore to be incapable of fulfilling the purposes and principles of a communistic society and a patriarchal government, especially as all the members now living are required for governing, and there remain no members to be governed.

I

Master's Positions.

The Master Holds:

1st. That the society was legally constituted; is a legal organization and the trusts created for it are valid.

2nd. That the plaintiffs have no such proprietary right or interest in the property and assets of the society as entitles them upon dissolution to any part or share therein, or as entitles them to the relief prayed for.

3rd. That the society has not been dissolved by common consent, or by an abandonment of the purposes for which it was formed, or by any act or acts of administration.

4th. That the property, real and personal, is held in trust for the society as a survivorship for the benefit and use of the society as such; that the trust is a valid one and not in violation of the rule against perpetuities.

In discussing the question of dissolution and of abandonment, he holds:

1st. That a dissolution by consent must be with the consent of *all* the members.

2nd. That the dissolution by reason of abandonment of principles and purposes must be an abandonment by *all* the members.

The Master is sustained in all his findings of law and fact by the Court below.

In addition, however, the Court says:

> "It is not necessary nor would it be proper for the "Court to express any opinion as to what would be the "legal status and the ultimate disposition of the prop-"erty of the Harmony Society were its existence ter-"minated by the death of all its members, or were a "dissolution otherwise effected. • No such questions are "before us—we are not dealing with the assets of a de-"funct or dissolved association."

It is, therefore, clearly admitted :

1st. That a trust exists for the benefit of the society.

2nd. That such trust is a surviving trust for the society *as a society.*

3rd That the ultimate destination of the property, in the event of the death of all the members, or a dissolution otherwise, is not determined.

4th. It is also clear that no title vests in the members as individuals. They may come, they may go or die, and the title in the trust is in the Harmony Society as a beneficiary.

And we are now confronted with these propositions as covered by our assignments of error.

In support of the assignments, so far as they relate to these questions, we present the following considerations:

We propose to argue:

1st. That the Harmony Society is an association, in its purposes and form of government, obnoxious to the policy of the law.

2nd. That it is incapable of holding lands or personalty, either directly or as the beneficiary of a trust.

3rd. That the trusts create a perpetuity for the benefit of an unincorporated association, having neither religious, charitable, literary or scientific purpose.

4th. That even if the association were a valid and legal organization, yet the purposes and principles of the society have been abandoned, its scheme of government perverted, its property entirely taken from it, and that the affairs of the society have been put into liquidation.

That its affairs are now in the hands of one who seeks to be the sole survivor of the society and the sole successor to all its wealth, and who in pursuance of such purpose has diverted the money of the society to the purchase of the interests of many of the younger members whose prospects of survivorship apparently were menaces to his scheme of succession.

5th. That since 1836 all the then members and all successive members became and were equally interested in the *"joint and indivisible stock"* comprehending all of the property and funds of the Trust; that upon the failure of the trust for any reason or from any cause, the

terms of the trust making no provision over in such event, the property of the trust reverts by way of resulting trust to those equal owners of said "joint and indivisible stock"—those who are living, and the heirs and legal representatives of those who died in the society since 1836.

6th. That each of the plaintiffs is an heir and leggal representative of an ancestor dying in the society since 1836—such ancestor being by the agreement of 1836 an equal owner of said "joint and indivisible stock."

II
The Society an Illegal Association.

The Harmony Society through its whole existence comprehended two marked divisions or classes in the membership, viz.:

The Patriarch or Governor, who was the autocratic and sole Patriarch until his death in 1847, and

Members admitted to prescribed and limited privileges and unlimited duties and strict obedience. These latter never acquired a voice in the management of the affairs of the society or the selection of the Patriarch, manager or superintendent.

The same distinction marks the society since Aug. 12, 1847, when articles dated Aug. 12 of that year ("Exhibit E," p. 61 Master's Rep. 146) were entered into, devolving

all of the powers which George Rapp originally had upon a Board of Elders consisting of nine persons, whose names are therein given, and a Board of Trustees; and the then existing Trustees, Romelius L. Baker and Jacob Henrici were therein nominated Trustees.

All vacancies in the Eldership and in the Board of Trustees were to be filled by the Board of Elders, and the members of the society as such had no voice whatever. The Patriarchs were not bound to account, nor had the members the right to compel an accounting.

The articles of 1805 ("Exhibit A," p. 47), of the 20th of January, 1821 ("Exhibit B," p. 50), and the articles of March 9, 1827 ("Exhibit C," p. 52), are all articles of adoption, and set forth the terms upon which new applicants were admitted, their rights and their duties, and the covenants of "George Rapp and his associates" with them.

The articles of 1836 were declaratory of titles only, changing the pre-existing articles only so far as they provided for restitution of property contributed by retiring members.

Every contract prior to that of 1836 provided that in the event of withdrawal of contributing members, each member should be entitled to a restoration of his contribution, in three equal annual installments, without interest; but no member so withdrawing was entitled to compensation for labor performed by him as a member of the society.

The articles of 1836, "Exhibit D," p. 57, rescinded this feature of restitution. It declared that the principle of restitution, as embodied in the 6th article of the agreement of 1827, was a manifest departure from the "great principle of community of goods," and tended to foster and perpetuate a feeling of inequality; that it was one which could not now be enforced with fairness, inasmuch as all records and memorials of respective contributions up to 1818 had at that time been destroyed.

It was thereupon declared by Article 2nd (p. 59) that:

> "All the property of the society, real, personal "and mixed, in law or equity, and howsoever contrib- "uted or acquired, shall be deemed *now and forever, "joint and indivisible stock.* Each individual is to be "considered to have finally and irrevocably parted with "all his former contributions, whether in lands, goods, "money or labor; and the same rule shall apply to all "future contributions, whatever they may be."

The 3rd article provides that should any individual withdraw from the society, or depart this life, neither he in the one case, nor his representatives in the other,

> *"shall be entitled to demand an account of said "contributions, whether in land, goods, money or labor, "or to claim anything from the society as a matter of "right."*

Nothing that the Master has said bearing upon the question of plaintiff's claims, as based upon any of the articles prior to that of October 31, 1836, has any relevency to our contention. Our entire right is based upon the articles of 1836, whereby all the property of the society is merged into a "joint and indivisible stock," in which our ancestors dying in the society since 1836 were equally interested.

And our right is enforceable, because the trust upon which the same is held has failed.

Neither are we barred by the third article, for we do not "demand an account of" our contributions, nor do we claim anything from the *society* as a matter of right.

For the first time in the history of the society is now presented for adjudication a bill which declares the society dissolved, prays for a receiver and a distribution of its property because thereof. We deny the society's existence; it is not a party to the bill.

As the constitutions of the society do not provide a terminal period of its life, nor contemplate its death or make any provision for the distribution of its property in the event of its dissolution' it is evident:

That the last survivor is not entitled to take by reason of anything contained therein:

That the property so held in trust is not *"bona vacantia,"* and does not escheat, because the society is unincorporated.

And that therefore the property must go to those who are equally interested, under the articles of 1836, in the joint and indivisible stock therein created, as donors of that fund to the Trustees, to them who live and to the heirs and legal representatives of those who are dead.

While, however, we do not base our right of inheritance upon any contributions of our ancestors to the society, *prior to the articles of 1836*, yet it is important to consider those articles, in order to ascertain what the principles and purposes of the society were, and contined to be till its dissolution; its form of government; the nature and character of trusts created, their duration and the future disposition of the property controlled by said Trusts.

Nature and Character of the Trusts.

The articles of 1805, February 15, (p 47 "Exhibit A" vol. 1) provide for the delivering up of all the estates of members:

> "*To George Rapp and his associates* in Harmony, "Butler County, Pennsylvania, as a free gift or donation "*for the benefit and use of the community there* * * "

The articles of January 20, 1821 ("Exhibit B" p. 50) seem to have been drafted for new members.

The articles of March 20, 1827 ("Exhibit 6," p. 52) expresses the grant and conveyance of all the subscribers, property to:

> "*George Rapp and his associates" as a free gift "or donation for the benefit and use of the said associ-"ation or community.*"

The articles of 1836 ("Exhibit D" p. 57) seem to be directed wholly to the repeal of the restoration clause of the articles of 1827.

The Master finds (page 142) that prior to his death in 1834, Frederick Rapp, had been the business agent of the society;

That on July 5th, 1834 ("Exhibit 85") the members of the society executed a power of attorney to George Rapp, as general agent of the society in all its temporal affairs, with power to appoint agents under him—and that on the same day he appointed Baker and Henrici his substitutes.

This power is printed at length on page 142, &c.

The appointment of Baker and Henrici, by Rapp ("Exhibit" p. 145) expressly recites:

"The said R. L. Baker and Jacob Henrici shall "neither acquire nor claim any personal interest in the "present resources or future earnings of the said society "other than that of a member of the said society, agree- "ably to the plans and terms of the associations, *but "shall be considered as exercising the same trust men- "tioned in a declaration of trust signed by Frederick "Rapp on the 20th day of July 1828, and referred to "in the foregoing power of attorney to George Rapp.*"

In the power of attorney to George Rapp (p. 142), it is recited that Frederick Rapp was for a series of years the agent of the society,

"carrying on in his own name, all the external business "of said society, and taking to himself the titles to real "estate as well as the evidence of claims arising out of "the various transactions of said society;"

And that by an instrument dated July 20, 1825, he, the said Frederick, declared that all the property real, personal and mixed then or thereafter to come in enjoyment or title "*was and should be considered the property of the said society*" *in which he had no absolute interest whatever.*

Baker and Henrici as agents held the trust, under this appointment until the articles of August 12, 1847, when by their selection into the Board of Trustees, under those articles, they henceforth held and exercised the trust as a Board of Trustees. The cause of these articles of 1847, was the death of George Rapp, from whom Baker and Henrici held their appointment.

The 6th article of this agreement of 1847 (page 65) declares that all the property held now or subsequently acquired by the Trustees *should be deemed the common property of the society*, each trustee disclaiming all personal interest therein, other than as a member. And these trusts continue until the present day—the Trustees only changing.

The trusts are continued without change and are recognized by the articles of 1890 (67). 1892 (74) and 1894, (112).

The first of these is for *ratification*, the second, enlargement of the powers of *the Boards created by the articles of 1847*, and the last to authorize conveyance to the Union Company.

It is therefore evident that all the property—whether lands, goods, money or labor—of the society was for "*the use and benefit of the society*," and is held in trust for the "*use and benefit of the society*."

The Purposes of the Society.

The community was formed for the purpose of more efficiently carrying into effect a mode of life, founded upon the observance of certain principles and beliefs, and an internal government of its members in accordance therewith. To that end members originally made contributions of real and personal estate to George Rapp and his associates in varying proportions and contributed their labor for the common welfare.

Without the maintenance of these principles for an *object*, the reason for the society's formation and existence would disappear.

The trusts created and existing are inseparably connected with the purpose and principles of the society, and are held solely for the maintenance and advancement of the same.

What then are those principles? The article of 1805, and all subsequent articles speak of the society, as a society, or community of persons. There were many in numbers, strangers in blood, who were in sympathy with each other for a common object.

The Master has entitled the agreement of 1836, "Exhibit D," page 57 of the printed record, "*Supplementary articles* of 1836." It is *supplementary* to the agreement or treaty of the *9th of March, 1827*, ("Exhibit C," page 52) and amendatory thereof, *leaving the whole of the former in full force and effect*, except that it repeals the 6th clause relating to the restoration of contributions to withdrawing members, and adds *equality of ownership* of the property then converted into "joint and indivisible" stock.

The articles of 1836 are therefore to be read as though they contained all of the provisions of those of 1827, except the 6th clause.

And so read, they contain the constitution, principles, covenants, restrictions, duties, obligations, purposes and trusts of the Harmony Society, which continued as such until the present time, as the subsequent articles show.

The articles of August 14th, 1847 (page 61) in the first article (62)

> "solemnly recognizes, establish and continue the arti-
> "cles of our association (the sixth section excepted)
> "entered into * * on the *9th day of March, 1827*,
> "* * and the *supplement thereto adopted* * *
> "*on the 31st of October, 1836*, * * except so far
> "as the same are affected by the death of * *
> "George Rapp, or hereinafter altered or modified, and
> "to this extent we declare the said articles to remain in
> "full force."

And therefore the articles of 1827 and of 1836 are to be read into and form part of those of 1847, with the exceptions noted.

It will not be disputed and was not below that until the death of George Rapp, Rapp was and always had been the patriarch, *and that the system of government had been a patriarchy.*

But it was contended that the patriarchy was abolished by the articles of 1847, and in the substitution of a Board of Trustees and a Board of Elders provided for therein.

This view is wrong, for the following reasons:

The articles of *1827* were expressly made part of the articles of *1847*, and those articles expressly provide (p. 52) for "*the government of the patriarchal age*," otherwise it would be that the *moment of the execution* of the articles of 1847, the existence of a patriarchal government was *affirmed* as part of the constitution, and with the same breath it was *abolished*—a conclusion illogical, a result unwarranted.

Since there are no words of repeal or abolishment of that system in the articles of 1847, those articles must be construed so as to maintain that system. Thus, instead of a *single* patriarch the articles of 1847 provide for a *plural* patriarch, to be known as a "Board of Trustees" and as a "Board of Elders."

The powers conferred upon this dual patriarchy are as full, absolute and dominating as were ever held by any single patriarch at any period of the world; their orders were unappealable and uncontrolled, as a reference to articles 3rd (62) and articles 4th and 5th (64) disclose.

The Powers of the Elders Therein Recited Are:

1st. Exclusive regulation of all the interest of the society in temporal affairs;

To appoint and remove superintendents and give orders in business operations and see that members perform assigned duties;

2nd. To determine all disputes and misunderstandings; to advise and remove;

3rd. To admit new members and to expel, and new members shall so agree in writing;

4th. To establish regulations for the maintenance and improvement of morals and for instruction;

5th. To appoint spiritual leaders;

6th. Power to remove members of the Board, and of the Board of Trustees.

7th. *To fill all vacancies in the Board and in the Board of Trustees.*

The Trustees *as a Board*, take all titles in trust and are authorized to exercise all the powers given them as a Board—extreme and full as those powers are, *and are not held to any accounting.*

It is therefore evident that the members as such are distinct from these two boards and have no further lot or part in the society than what remains to them under the articles of 1827, viz (53):

To submit faithfully to the laws and regulations of the Society; to manifest a cheerful and ready obedience towards superintendents; to promote the interests and welfare of the community, by the labor of their hands.

And for this these members are to receive (54):

The privilege of being present at every religious meeting, and of *receiving all such instructions in church and school as may be reasonably required for their temporal good and for their eternal felicity;*

The necessaries of life, clothing, meat, drink, lodging, in health and strength, in sickness and infirmity, together with medicines, &c.

As between the plural patriarch consisting of the two boards as entities of the one part, and the members of the other, the *former have absolute* power, and the latter are serfs—in fact slaves, since these articles impose no temporal ending of servitude except by death.

These two Boards conjointly possess the fullest powers of a Patriarchy; The Trustees are members of the Board of Elders, and are removable by the latter.

The members as such have no vote; no power to change the personel of the Board; there is no terminal period to the life of the two Boards, which are self perpetuating. The Society is therefore not democratic; nor is it republican in form; it is inconsistant with any form of government other than a despotic patriarchy, with powers absolute over civil, religious, moral, social functions, and absolute control of labor of members.

And this patriarchy has never been subsequently changed.

The articles of 1890 ("Exhibit F," page 67) are only articles of ratification, and re-enact the articles of 1847.

The articles of 1892 (" Exhibit G," page 74) recognise the existing constitution, and add to the powers of the Trustee given by the articles of 1847, *the power to borrow, and to evidence written agreements in the name of both trustees by the act of one.*

The articles of 1894 ("Exhibit H," p. 112) *recognize the insolvency of* the society, *threatened suits*, and *the formation of the Union Company*, and authorizing a transfer of the property of the society to that corporation.

So that it abundantly appears that the constitution of 1836, except the 6th article, is the constitution of to-day; that the Patriarchy of Rapp has been succeeded by the Patriarchy of the two boards; and that no pretence has ever

been made in any article to destroy or impair the conditions, requirements, trusts and principles declared by the articles of 1836.

The principles and purposes of the society are to be found not only expressly recited in the agreements or articles, but also in the practices, laws and regulations imposed by the will of the Patriarch under the powers contained in the various articles.

Thus in Article 2nd of the agreement of 1805 (48) the incoming members pledged themselves jointly and severally to

> "submit to the *laws and regulations* of the *community*
> "*and to show due and ready obedience toward those*
> "appointed and chosen by the community as superin-
> "tendents in such a manner that not only we ourselves
> "endeavor by the labor of our hands to promote the
> "good and interest of the community, but also to hold
> "our children and families to do the same."

There are no provisons in these articles defining any right of control by the members. The *laws and regulations* were therefore made, promulgated and enforced as in a Patriarchy, by Rapp, who was then the Patriarch.

Thus we have a *Patriarchal* government, the maintenance of which is one of the purposes of the society; the *power of enactment* of *laws and regulations* binding upon members, and *enforcement* of the same; *ready obedience* thereto, and *labor of the hands* for the good and interest of the community by the members.

There can be no doubt that the widest distinction between the proprietaries and the members is as carefully provided for.

The articles of 1805, 1821 and 1827 recognize "*George Rapp and his associates*" as conceding, and the applicants accepting from them, *not* the full and equal share of power which Rapp and his associates possessed, but the limited rights therein prescribed by Rapp.

And this relation has never at any subsequent time been changed.

The governors are not required to account for their possessions, or the uses to which the trust properties and incomes have been applied; under these articles, no member as such has any standing in any Court to compel such accounting.

CELIBACY.

Celibacy, as early as 1806 or 1807, was ordained by the Patriarch under his power to *make laws and regulations.*

The answers admit the "practice" of celibacy since the date mentioned but deny that the observance of it was *essential to membership.* By the articles of 1805, no terms of membership are mentioned. Admissions were at the will of the Patriarch. It is also true that many married persons had been admitted, but it is also true that they ceased to cohabit as man and wife after admission.

It is also true that several children were born to members, but it does not appear that such children had been born of intercourse after their parents became members.

To the contrary, every case of retirement from membership figuring in the law cases had its origin in a desire to marry. The rule or law was rigidly enforced, and no marriage was permitted in the society.

In the Nachtrieb case [tried in the Court below and hereafter more fully considered) Justice Grier found as an *admitted fact that marriage* and *the sexual intercourse of married persons* were *prohibited* in the society.

Community of goods was recognized as an underlying principle in 1805. The contributions were absolute for the use of the community, reserving the right of restoration in the event of withdrawals.

Community of persons and goods logically demand celibacy as its foundation principle. Otherwise the laws of inheritance would prevent; there would be the inequalities arising from the prolific increase of some and the comparative barrenness of others. Family ties and the consequences arising therefrom would prove speedily destructive of the society.

So celibacy and the non-intercourse of married members constitute purposes of the community, in addition to the other features above noted.

COMMUNITY OF GOODS.

The preamble to the articles of 1827 (52) fully express the objects and purposes of the society:

> "Whereas, By the favor of Divine Providence, an "association, or community, has been formed by George "Rapp and many others, *upon the basis of Christian "Fellowship*, the principles of which being faithfully "derived from the *sacred scriptures*, include the *gov-"ernment of the patriarchal age, united to the com-"munity of property adopted in the days of the apos-"tles*, and wherein the single object sought is to ap-"proximate, so far as human imperfection may allow, "*to the fulfillment of the will of God*, by the exercises "of those affections, and the practice of those virtues " which are essential to the happiness of man in time "and throughout eternity."

Thus we have the fundamental principles of the Harmony Society as follows:

1. *Christian Fellowship*, including the government of the *patriarchal* age united to the *community of property adopted* in the days of *the apostles.*

2. The approximation as a single object of the society to the fulfillments of the Will of God by the exercise of affections and practice of those virtues essential to the happiness of man here and hereafter.

3. The belief in the Second Advent of Christ, the nearness of the millenium and the doctrine of celibracy, were all being preached and practiced.

The Master finds on page 234 of his Report that celibacy was *not one of the purposes of* the Society and was not requisite for admission to membership.

He is not sustained by a single competent witness; he is confronted by the admissions of the Answers of the continuing custom from the earliest days of the Society; also by the power to make and enforce rules and regulations; also by the logical necessity of communism. The adjudicated cases connected with the Economy Society recognize celibacy as a fundamental principle of the Harmony Society. In the Nachtrieb case the depositions of record declared in the Court below, made by the members in 1847 celibacy is an established principle.

"Community of goods," as adopted in the days of the Apostiles, implied numbers.

At the ascension of our Saviour the number of disciples was about one hundred and twenty (Acts. ch.1, verse 15). And on the day of Pentecost there were added unto them about three thousand souls. (Acts 11, ch., verse 41).

Acts Chapter IV.

"32. And the multitude of them that believed "were of one heart and of one soul; neither said any "of them that ought of the things which he possessed "was his own; but they had all things in common."

"34. Neither was there any among them that "lacked; for as many as were possessors of lands "or houses sold them, and brought the prices of the "things that were sold."

"35. And laid them down at the Apostle's feet; "and distribution was made unto every man according "as he had need."

The definition of a "Community," as given by Webster in the latest edition, is as follows:

"A *body* of *people* having common rights, privi- "leges or interests, or living in the same place, under "the same laws and regulations, as a community of "monks."

A "Community" is distinct from the idea of *family;* the word necessarily implies the voluntary association of those who are under no family relation, but who have united in a common scheme of living, acting and government.

"Communism" is defined to be "the re-organiza- "tion of society, or the doctrine that it shall be re-or- "ganized by regulating property, industries and the "sources of livelihood, and also the domestic relations "and social morals of mankind. Socialism is especially "the doctrine of a community of property, or the reg- "ulation of individual rights and property."

Sanford's Cyclopedia of Religious Knowledge.

"Community of goods, the holding of goods, in "common, implying common ownership and common "use and enjoyment, but not in law, the right of par- "tition or severance."

Century.

"Communism, in its ordinary signification, is a "system or form of common life, in which the right of "private or *family property* is abolished by law, mu- "tual consent, or vow. To this community of goods "may be added the disappearance of *family life.*

Woolsey, Communionism and Socialism, Page 1.

Society Against Public Policy.

The society having its existence for the maintenance of these principles and purposes, is *obnoxious to the policy of the law;* and a trust to support and maintain them, *is for that reason void;* and the property held therefore passes by way of resulting trust to the classes hereinbefore specified.

In the first place, the jurisdiction of the Patriarchy extends to municipal control, in a manner vitally different and antagonistic from the constitutional system of the State respecting communities. Thus, the exercise of the franchise; of the right of naturalization; of participation in national, state and local affairs, and of the right of a voice in the periodical election of municipal officers,-- indeed, all civil rights is taken away from the individual and is vested in the Patriarch. All individual rights are merged into the community.

As there can be no *individual* wealth, there can be no individual contracting; nor can there be any executionary response for individual liabilities. All the private property which might result from individual labor is vested in the community, and the member is left for protection to the will of the Patriarch.

The most solemn obligations of civil duty of the individual, is controlled by the will and regulation of the Patriarch.

The scheme involves a system of labor which, if successfully carried out, involves a disastrous competition

against free labor; for the member is to work without payment, beyond his lodging board and maintenance. Its effect, if practiced to the full extent, is as disastrous to free labor as negro slavery proved to be.

The members are concreted into an individual designated as a "Community," and hence they are not equal before the law; nor are they free, nor does their situation at all bring them within the declarations which are the foundations of the Government.

As the constitutions of the society make no provisions for a termination of its life, it follows that if the scheme should for long periods prove successful, the society would absorb to itself vast amounts of money withdrawn from the community at large, and held as for a perpetual life, thus exempting itself from the common lot of individuals in the event of death, by way of distribution among those entitled: a defeat of collateral inheritance taxes, and all the other duties and successions and obligations of the ordinary citizen.

The inevitable result of the scheme is the aggrandizement of those in power, and the debasement of the membership in ordinary.

Judge Grier in the Nachtrieb case hereinbefore referred to describes the system as an

"isolated condition of a community whose moral and intel-
"lectual energies are studiously kept in a state of torpor
"and inertness; with undefined social rights, and an ad-
"ministrative power limited by no written rules, and with
"matrimonial restrictions contrary to the policy of the law."

A community of persons, isolated and differentiated in all the functions of civil life, is against the policy of the law; the doctrine and practice of celibacy and non-intercourse of married persons are against the policy of the law; community of goods is socialistic and antagonistic to the system of distribution of estates and is against the policy of the law.

At the time of the inception of this association the laws of Pennsylvania did not recognize the puposes and principles which underlie its existence as proper to be enfranchised with corporate powers.

When the system of incorporation was extended by the corporation laws of 1864 to almost every form of association, the Legislature did not deem it proper to extend its franchise to such a corporation.

And so, also, the corporation laws of 1874, broad and full as they are, provide no clause or paragraph under which such an association could claim corporate privileges and franchises.

Fancy an application for a charter to the Legislature for this association, asking corporate powers to establish a patriarchal municipality with community of property, a membership of serfs bound to lifelong labor without recompense, except as to bare existence, and barred from rebellion by forfeiture of the proceeds of that labor; withdrawing estates from recognized political control, forbidding matrimony, defeating the laws of inheritance; for a society for perpetual accumulations in itself as an entity, a power of making laws and regulations, a tying up of property forever, and an absolute taking away of the individuation of its members!

Can it be, then, in these circumstances that individuals can by their own volition establish a community with all the attributes of corporate power, for such purposes, and successfully maintain that Courts shall recognize the monstrosity thus conceived and born?

Under the constitutions, or whatever the agreements may be called, the individual members had no assignable shares of stock; they are mere incidents; they live, they die, the society goes on. It concentrates in itself the unlimited wealth which individual contributions and individual labor pour into its coffers, so that it may well be, should

the scheme be continuously successful and should the society have the perpetual life contemplated, its numbers would be overflowing, its wealth enormous, its members, deprived of matrimony, would cease to add to the population of the state; its enslaved labor be a successful competitor of paid labor, and its membership an assemblage of monks and nuns.

And for the foregoing and many kindred reasons, which need not be elaborated, the trust, however validly constituted itself, must be defeated because of the badness of the purposes for the benefit, support and maintenance of which it was created.

III

The Society Not Competent to Hold Property.

Conceding for the sake of the argument that the principles, purposes and scheme of government of the Harmony Society are not against public policy, and that they are unobjectionable in themselves, yet we contend:

First. That the Harmony Society is an unincorporated association: that it is an organization neither for a religious, charitable, literary or scientific purpose, and therefore it is incapable of holding property in its own name.

Second. That a trust created for its benefit and use is invalid.

Even if it be held that the Harmony Society can validly hold property in its own name, or through trustees for its use and benefit, we contend:

That the trusts for this society violate the rule against perpetuities and are therefore void.

If it should be held that the rule against perpetuities has not been so violated we then contend:

First. That the grants are in the nature of base or conditional fees, reverting to the donors and their heirs upon the failure of the purposes of the trust by way of resulting trust.

Second. That the society has come to an end and no longer lives, and therefore the properties covered by the trust reverts to the donors, or their heirs or legal representatives.

The Master's Positions Are:

1st. It is conceded that the society is an unincorporated association:

2nd. But that the trusts, while they are for the "benefit and use of the community," do not designate any particular purpose to which the property may be devoted;

3rd. That the property may be held indefinitely, but if of advantage to the society, it may be sold:

4th. And therefore the trusts do not violate the rule against perpetuities:

5th. That notwithstanding its want of incorporation the society may be *cestui que* trust of personal property:

6th. That while it cannot take title to real property in its society name, property may be held for its use and benefit by Trustees and its right to the enjoyment of property be secured in that way.

7th. That the trusts do not constitute an estate upon a condition subsequent, or a base fee, because the

words in the conveyance do not of themselves create a condition, nor are so connected with the grant as to qualify or restrain it.

As we have said, it is conceded that the Harmony Society is an unincorporated association.

It is also conceded that the terms of the trust are absolute; the uses of the property are not limited to any religious, charitable, literary or scientific purpose.

The only limitation expressed in the terms of the trust is "*for the use and benefit of the society.*" That, of course, means for the maintenance, support and continuance of a community organized for the purposes set out in the constitutions.

None of these purposes come within the class of purposes which are defined by the law to render an unincorporated association capable of holding property through Trustees. They are neither religious, charitable, literary or scientific purposes.

Neither do any of the conveyances denote that the property held in trust is to be donated to a religious, charitable, literary or scientific purpose.

In the case of *Kain vs. Gibboney*, 101 United States Rep. 362, *Strong, J.*, delivering the opinion, says in discussing the will in that case:

> "A 'charity' is generally defined as a 'gift for a "public use.' Such is its legal meaning, and here the "beneficial interest is given to a religious community.

In the case at bar, the purposes of the Harmony Society are defined once and forever since by the articles of 1827, and those purposes are :

> "Whereas, By the favor of Divine Providence, an "association or community has been formed by George "Rapp and many others, upon the basis of Christian "Fellowship, the principles of which being faithfully "derived from the sacred scriptures, include the gov-

"ernment of the patriarchial age, united to the com-
"munity of property, adopted in the days of the
"apostles, and wherein the single object sought is to
"approximate, so far as human imperfection may allow,
"the fulfilment of the law of God, by the exercises of
"those affections and the practice of those virtues
"which are essential to the happiness of man in time
"and throughout eternity."

Then follow the mode of government, the gift of lands, tenements, goods, chattels, money or debts due, belonging to the member, in possession, or in remainder, or in reversion, or in expectancy as a free gift or donation "*for the benefit and use of the said association or community.*

The community is simply communistic, where the members, distinguished from the Patriarch, or Patriarchy—are serfs; trading their labor for a bare maintenance, by virtue of a covenant which could never be enforced against the community as an entity; where the sole power is vested in the government over body, raiment, lodging, food, by-laws and regulations not defined nor limited by any fundamental limitation—and includes the power of expulsion.

It is invariably held that an unincorporated association is incapable of taking by gift or grant.

Town of Paulet vs. Clark, 9 Cranch, 292.
Vidall vs. Girard, 2 Howard, 127.
Ingles vs. Trustees of Snug Harbor, 3 Peters, 144.
Ould vs. Washington Hospital, 95 U. S. 303.

The gifts or grants in the case at bar contained no direction for a future incorporation, and therefore is not saved by the case of *Ingles vs. Trustees of Snug Harbor* (3 Peters 144), in which case the devise was to Trustees to erect a Hospital, and directed the Trustees to apply to the Legisla-

ture for an act of incorporation, which was done. The Court held the devise good, because of that, and distinguishes the case of the *Baptist Association vs. Hart's executors* (4 Wheaton, 27), on that ground.

In the case just cited from Wheaton, the Court held—"That the association not being incoporated at the testator's decease could not take this as a society."

In the *Girard will case* (2 Howard, 127), the Court said:

"The donees were an unincorporated association, which had no legal capacity to take and hold the donation in succession for the purpose of the trust."

A *grant to Trustees* for a mere voluntary association is void.

Hornbeck vs. Westbrook, 9 Johnson, 73.
Jackson vs. Cory, 8 Johnson, 385.
Sloan vs. McConahey, 4 Ohio, 157.
German Association vs. Scholler, 10 Minn. 331.
Thomas vs. Marshfield, 10 Pickering. 364.
Sanderson vs. White, 18 Pickering 328.

This doctrine applies with full force where the gift is wholly of personal estate.

Norice vs. Bishop of Durham, 10 Vesey (1805).
1 *Ames on Trusts*, 214.

We submit that under the authorities cited, the trusts sought to be created are void, and that the property reverts to all who are within ownership and entitled as inheritors of those members who have died in the society since 1836.

The Master cites, (p. 187) several authorities, which it is claimed, sustain his positions, that

> "Although a voluntary, unincorporated association "cannot take title to real property in their society name, "as they are not in law recognized as persons, it may "be held for their use and benefit by Trustees, and "their right to the enjoyment of the property be se- "cured in that way."

It will be found upon examination, that not one of them, deals with an unincorporated associations, having no religious, charitable, literary or scientific purpose. And therefore do not apply to the case at bar.

IV.

The grants create a Perpetuity.

It is also evident—without again quoting the articles themselves—that the community has no fixed period of life. So far as the articles are concerned, the scheme of the society contemplates *perpetual* life. Its death, winding up, insolvency, dissolution from any cause, are never thought of, and are never mentioned, or provided for.

The trusts created are to endure perpetually coincident with the perpetual life of the society; the titles vested are therefore conclusively for a period beyond a life or lives in being and twenty-one years thereafter, and thus they do offend against the rule against the perpetuities.

The Master's contention is that as the gifts were absolute, there was the power of sale in the Trustees, and that therefore there was no perpetuity. But the argument overlooks the vital fact that the proceeds of such sales are to be held upon the same trusts as were the properties sold. The power of sale is not given to *terminate*, but to continue and benefit the community.

It is not the *power* of *sale*, but *the period of distribution*, which decides whether a perpetuity has been created. The suspension of the power to alienate the subject of a trust is not relieved against by a power to exchange for other property to be held on the same trust, or to sell it and reinvest the proceeds to be held on the same trust.

The only power of sale is given by Article 5th of the Articles of August 12th, 1847, ("Exhibit E," page 61), and is part of the powers given to the Board of Trustees in the management of the affairs of the society.

The next article (6th) expressly declares:

> "That all the property, real, personal and mixed, "which *now or hereafter* shall be held or acquired by "any Trustee or Trustees, or persons under them, is "and shall be deemed the common property of said "society" * * * according to the articles of asso-"ciation re-established and continued, and according "to the present agreement."

If the Master be right, a sale of trust property defeats the trust and the proceeds of the sale are not bound by the trust and the express provisions of the articles of 1847 are nullified.

Again the Master finds—and is therein sustained by the Court below—that the trusts created are not trusts for the *members* of the society, *but for the society itself as a society.* Therefore, members may be admitted; they may die; they may be expelled; yet the society goes on, and the trusts are undisturbed.

We urge that the trusts for this society are unprotected by incorporation, by any of the purposes which protect an unincorporated association; that they are not based

on an anticipated corporation, and that, therefore, the grant being in fee, the accretions cumulative, without limit, the trusts violate the rule against perpetuties, and are void.

That the properties, real and personal, covered thereby, therefore, revert by way of resulting trust to the donors, their heirs or legal representatives.

The third paragraph of Article 5th of the agreement of August 12. 1847 (M. R. 149). authorizes the trustees to purchase and sell real estate, and to sell all of the lands now or hereafter belonging to the society, but expressly provides "that the proceeds of all such sales *shall be held in trust for the society.*

It is apparent that if the society continues to live, as it has already for so many years, the trust of the titles, or the proceeds, will continue to live in the name of its Trustees. Even if the real estate were sold, the proceeds of that real estate remains land, and is to be treated as land.

So far as the personal property. the *profits* and accretions therefrom and from the labor of members are concerned, it becomes part of the capital of the community, necessarily, because there are no stockholders among whom they could be divided. Hence those accumulations are perpetual, and are in violation of the rule against perpetuties.

We earnestly urge upon the Court that the property held by these Trustees, under the necessary construction of the articles, is a trust for the society as long as it remains a society, and upon its death that it shall revert to the donors, their heirs and legal representatives.

That the particular estate or use for the society cannot be broken or defeated by the society, for it has no control under the articles over the titles, which are inflexibly fixed in the Trustees; 1st, for the society, 2nd, when the society ceases to be a society, then for the donors as aforesaid.

The society is the beneficiary for its life only. It has no immediate right to become the present absolute owner of the trust properties.

> "A perfect definition of a perpetuity has not been "given, and the nearest approach to it is found in "Lewis on Perpetuities, ch. 12, where it is said to be a "future limitation, whether executory or by way of re- "mainder; and of real or personal property; which is "not to vest till after the expiration of, or which will "not necessarily vest within the period prescribed by "law for the creation of future estates, and which is "not destructable by the person for the time being en- "titled to the property subject to the future limitation, "except with the concurrence of the person interested "in the contingent event."
>
> *Hilliard vs. Miller*, 10th Barr, 334.

If it is conceded that the trust estate may continue for more than a life now in being and twenty-one years; and if it be conceded, as we think it must, that the Harmony Society had no power to convert its interests into an absolute estate, than the definition prevails, and we have here estates void for perpetuity.

In *Niefflin's Appeal*, 121, Pa. State, 205, the life tenant had a power of sale in fee simple in her lifetime, by which she could convert her limited estate into an absolute estate. It was held *that that power* defeated the rule against perpetuities. She did convey and she had the right to apply the purchase money as she saw fit.

Hare J. in the Court below, C. P., No. 4, Philadelphia, so holding, says, among other things:

> "If this inference is just, she had an immediate "right to become the present absolute owner * * "she could undeniably have vested an absolute interest "in the buyer, and so push the property beyond the "scope of a rule which only applies where the holder's

"estate is indestructible. *A power to sell, and re-in-*
"*vest the purchase money for the same uses would*
"*stand on a different footing.* * * *

The decree of the lower court was affirmed. Justice Green in that opinion, cites the following from Gray's Work on Perpetuities, Section 526.

"And if a man who has a vested limited interest
"in property has the *present unconditional* right to
"turn that limited interest into an absolute interest,
"and thus to acquire the *present unconditioned* abso-
"lute interest, he is regarded by the rule against per-
"petuities as already having such interest. * * *
"*There must be a person with a vested limited in-*
"*terest who has the immediate right to become the pres-*
"*ent absolute owner.*"

Where, then, will be found any immediate right in the Harmony Society to become the present absolute owner?

And where can be found in the Trustee any power to absolve the proceeds of the Trust real estate from the trust for the life of the Society?

It is held In *Re Walkerly's Est.*, 41 Pacific Rep., cited in American Digest for 1896, page 772, and 108 Cal. 627, cited in American Digest, page 4249, paragraph 3. that "though a devise in trust allows the trustee *to sell the property at any time, still it being provided that the trustees shall hold and invest the proceeds until distribution, which is not to be made until a definite time,* the perpetuity is created under the Civil Code, Sec. 771, which declares that the suspension of all power to alienate the subject of a trust *other than power to exchange it for other property to be held on the same trust, or to sell it and reinvest the proceeds,* to be held on the same trust, is a suspension of the power of alienation, within the inhibition of Sec. 715.

It is submitted that such is the common law rule, namely, that where there is a trust created or a restraint of alienation which would bring the trust within the rule against perpetuity, *that the mere power to sell and change investments, the proceeds to be held upon the same trust does not take it out of the inhibition of the statute.*

It was contended below by the learned counsel for the defendants that under the articles of 1847, the Trustees have power to sell all the property the title to which they hold in trust—and that, therefore, these articles, as the others, are no restraint upon alienation, and do not create a perpetuity. Yet if the Trustees do sell, it is only for the purpose of exchange, and the substituted property is to be held by them on the same trusts.

And so it is that all the property, original or substituted is for trusts which may continue forever, and the corpus is to be never diverted from the trust, so far as the articles provide.

And this society is unincorporated, and is for neither a religious, charitable, literary or scientific purpose.

In the case of *Barnes vs. Barnes*, 26 Maryland 171–172, the devise was in trust for children and their heirs. The Court held that no question is presented as to the future vesting of an executory estate, in order to determine the validity of the preceding one; but *simply* whether the trusts of the will require in their execution a longer period than that prescribed by the rule against perpetuities, and therefore render the property devised to the Trustees inalienable during that time. If so, the law denounces the devise in trust as a perpetuity and declares it void.

And the devise was held to violate the rule.

It seems a weak and insufficient distinction to say that the power to sell particular properties by a trustee, in aid of the trust, avoids the rule, when the corpus of the whole

remains to uphold and maintain a trust for a period of time which the rule prohibits.

Neither, in the event of this trust being held violative of the rule, would the trustees hold the title cleared of the trusts.

In the case at bar, the society itself in 1836, held the property; as donors declared that the property should be held by the society; constituted themselves as donees of the joint and individible stock; the titles are held by agents, managers or trustees, and were so taken permeated with the trusts so created. The case differs radically from those wherein the donor is a stranger, creating a trust for a third party, between whom there was and could be no privity.

V

The Grant Conveys a Limited or Base Fee.

Assuming for the present that the Trusts are valid, that the Harmony Society is in law a competent taker, then the grants are in the nature of a base or conditional or determinable fee, and upon the failure of the purpose for which the grant was made or the Trusts created by dissolution or otherwise, then the property reverts, by way of resulting Trust, to the donors and their heirs or legal representatives.

The grants of the real estate purport to convey a fee simple; the title to the personal estate is absolute.

The Trust covering them all is for the use and benefit of the society.

The condition, therefore, is, that when the society reaches the end of its existence, the purpose for which the grant was made and the trust created having failed, the property necessarily reverts to the donors and their heirs or legal representatives.

There is no terminal period fixed for the life of the society; there is no joint tenancy with right of survivorship or tontine scheme for the individual members; the property cannot vest in the Trustees divested of the Trust, nor can the fee simple float around without a taker, on the happening of the condition. There is, therefore, no place for it to go, unless it escheats—which it cannot do, so long as there are persons competent to take—except to the donors or their heirs or legal representatives, by way of resulting Trust.

The court sustains the Master in holding that the Trust is for the society as a society. Therefore, it is not for individual members as members. The society as such is absolutely distinct from its members as such. The latter die and new members are admitted, and none of them at any time have title to the property.

In the event of the dissolution of the society, those who are then members share proportionally, not because they are interested as *grantees*, but because by the articles of 1836, they being equally interested in the "joint and indivisible stock," which comprehends all the property of the society, then possessed or afterwards acquired, are *grantors* or *donors* of the Trust property, and *so* share proportionally only by way of resulting Trust, because the grant was conditional upon the life of the society.

We quote the terms of the Trusts as given in various articles.

July 20, 1825 (M. R. 142), Frederick Rapp under his hand and seal,

> "Solemnly and irrevocably declared that all the "property, real, personal and mixed, which then was or

"hereafter might be in his possession or enjoyment, or "title to which he held or might hereafter hold, was and "should be considered the property of the said society" "in which he, the said Frederick had no absolute inter- "est whatever."

July 5th, 1834, (M. R. p. 145) George Rapp, in pursuance of authority to appoint agents and trustees under him, given him by article of the same date, executed the following instrument:

"By virtue of the authority in the fourth article of "the foregoing power of attorney, I do appoint and "substitute in my place and stead, Romelius L. Baker "and Jacob Henrici, of Economy, Beaver County, Penn- "sylvania, to act as general agents of the Harmonie So- "ciety aforesaid, jointly and severally in my name, and "for the use of the said society to do and perform all "acts and things which as the general agent of said "society, I am authorized to do. It being distinctly "understood, however, that in accepting and perfo:m- "ing the office and business of general agents of the "said society, the said R. L. Baker and Jacob Henrici "shall neither acquire nor claim any personal interest "in the present resources or future earnings of the said "society other than that of a member of the said so- "ciety, agreeably to the plans and terms of the associa- "tion, but shall be considered as exercising the same "trust mentioned in a declaration of trust signed by "Frederick Rapp, on the 30th day of July, 1825, and "referred to in the foregoing power of attorney to "George Rapp.

"Witness my hand and seal this fifth day of July, "A. D. eighteen hundred and thirty-four."

August 12, 1847 (M. R. 150), after providing that the "powers hereby vested in the said Trustees shall extend to and embrace all the property of said society, real, personal or mixed, whether standing in the name of the late Frederick Rapp, the said George Rapp or in any other name whatsoever," contains the following:

"Article 6th. It is hereby distinctly and absolutely declared and provided that all the property, "real, personal and mixed, which, now or hereafter "shall be held or acquired by any Trustee or Trustees, "or person under them, is and shall be deemed the "common property of said society, and each trustee "now or hereafter appointed hereby disclaims all "personal interest in the present resources and future "earnings of the society other than that of a member "thereof, according to the articles of association "hereby re-established and continued, and according "to the present agreement."

It will be remembered that the Board of Trustees are also members of the Board of Elders, all of whom must be members of the society.

When the purposes cease, the objects for which they were given no longer exist, the maintenance of the principles contemplated are abandoned, then the grants terminate and the property reverts to the grantors and their heirs.

If, therefore, the system of Patriarchal government is abandoned; if the communistic scheme has been subverted and a capitalistic scheme substituted; if the religious beliefs have been departed from; if all that made the society distinctive disappeared, if it has become a trading community; if it is a transgressor of the laws; if it is insolvent; had gone into a process of liquidation; if it had parted with the control of all its property; if it had abandoned the form of management of even the articles of 1847; if its "joint and indivisible stock" has been perverted into outside adventures, and perverted to the purchase of interests of members; if the trustees have schemed to prevent the admission of new members, to deplete existing membership, to secure survivorship; if after covering its property with mortgages it has made conveyance of every foot of land, every asset, every means of living, without the owner-

ship of a roof to cover the head of one of its members, and taken to itself the shares of a trading corporation, then we confidently say, that the purposes for which the grants were made have entirely ceased and failed, and under the authorities must revert to the original grantors or their heirs.

In the case of Slagel vs. Lauer, 148 Pa. St., 236. Plaintiff's ancestor conveyed for a money consideration, a strip of land to the Commissioner of Berke County, to and for the use, intent and purposes following—to be forever hereafter unbuilt on, in order to prevent prisoners making escape by reason of contiguous buildings. The jail in 1849 was removed more than one mile from its old location.

The question was whether on the cessation of the use of the land for the purpose of the jail, it reverted to the grantor's heir. And it held it did.

The Court say:

> "It must not be forgotten that such a fee is never-
> "theless a fee simple because it may last forever in a
> "man and his heirs, the duration depending upon the
> "concurrence of collateral circumstances which qualify
> "or debase the purity of the grant; 2 Black. Com. page
> "109. The *qualification must be found in the instru-*
> "*ment itself.* * * But no especial or technical
> "words are required to establish it * * What is
> "needed is that the deed on its face contain a reserva-
> "tion or declare a specific purpose for which the land
> "was conveyed and from which the reservation may be
> "implied: *Calon J.*, in *Adams Co. vs. Logan Co.*, 11
> "Ill, 336.

The Court then distinguishes certain cases in which the grant was for purposes in which counties usually acquire land.

And on page 244, distinguishes those cases and decisions which relate to the construction of a deed as conveying an estate on *condition subsequent*, and deny that effect to a recital that the grant is upon a certain consideration, or to

a collateral covenant—And says: "The purpose here is not recited as part of the consideration, nor is its observance collaterally covenanted. Nor is the estate here granted one upon condition."

Again: "Of course upon the determination of a base fee, the property reverts to the grantor: 2 *Black Com.* pages 109-110; without any claim or act on his part where it is determinable by limitation * * In the meanwhile the estate is out of him, and all that remains to him is the mere possibility of reverter: 4 *Kent, Comms.* page 10. *Yet this mere possibility is capable of transmission* to his grantees and will pass to them under a conveyance of the reversion.

"*Scheets vs. Fitzwater*, 5 Pa. 126."

I cite also:

Kirk vs. King, 3 Barr, 436;
Scheets vs. Fitzwater, 5 Barr 126;
Vail vs. Long Island, 106 N. Y. 283;
Adams vs. Logan Co., 11 Ill. 336;
Church vs. Boland, 155 Mass. 171;
Church vs. Manning, 72 Md. 116;
Easterbrook vs. Tillinghast, 5 Gray, 17;
Campbell vs. City of Kansas, 102 Ills. 326;
Board vs. Edson, 18 Ohio, 226;
Gebhardt vs. Reeves, 76 Ill. 301.

In the case at bar the deeds are *in presenti*, the purpose and use are distinctly stated, and the conveyances are made as a free gift or donation.

And even if there has been a *consideration*:

"Although the feoffment be made for a consideration, it is the intent that guides the use, and the feoffer expressly declaring a particular estate of the use, it shows that *if he intended to part with the residue he would have declared that intention also.*"

2 *Fonblanque Ch. 5*, Sec. 4. (Note M.)

"The same principle applies to cases where the whole of the estate is conveyed or devised, but for *particular objects and purposes or on particular trusts.* In all of these cases, if these objects or purposes or trusts by accident or otherwise fail and do not take effect, * * then a resulting trust will arise for the benefit of the grantor or devisor and his heirs."

In the case of Reed vs. Stauffer, 56 Md. 226, the facts are as follows:—

Reed vs. Stauffer, 56 Md. 226.

"On the 17th of November, 1808, a lot of ground "in the city of Baltimore was conveyed by deed by one "Howard, for a consideration of 100 pounds, to trus- "tees, in trust and to and for no other use, intent, or "purpose whatever, that it should at all times there- "after be used as a burial ground or place of deposit "for the remains of the members of the Society of Ger- "man Baptists, commonly called Dunkers, and such "other persons as a majority of the trustees residing," "etc., "might think proper to give permission to be "buried therein." In 1875 a Bill in equity was filed "by the heirs of the trustees for the sale of the lot on "the ground that it had become unsuitable for burial "purposes, and that it was necessary and would be for "the interest and advantage of all the parties interested "therein that it be sold. The Court said, (p. 253):"

"In no event have the trustees named in the deed of "1808, their heirs and assigns, or trustees of the Church "of the German Baptist Brethren or their successors, any "right to have the lot in question sold and the pro- "ceeds of such sale distributed among themselves or "their *cestui que* trust. The deed of 1808 in express "terms declares the intention of the grantor, in creat- "ing the estate, to part with the use of the property, "conveyed for the particular purposes set forth in the "deed, and for no other purpose, and the grantees, by "their acceptance of that deed, are bound by that inten-

"tion. The intention of the parties to the deed is to "be carried into effect and accomplished, unless other "expressions in the deed positively forbid it; or unless "that intention violates some established principle of "law. By the express terms of the deed, it was the in- "tention of the parties to it to dedicate the lot conveyed "to the uses therein specially declared; and neither "they their heirs, the *cestui que* trust, nor the lot "holders have any right to divert it from those uses "The fact that a valuable consideration was paid for "the grant can make no difference. The estate con- "veyed and granted in express and exclusive terms, "cannot be changed by the amount of the consideration "paid. Where uses are declared they are to be held "as correspondent to the consideration. Fonblanque's "'Equity Book 11,' Sec. 4, note m, and the authorities "there cited. * * * It is manifest that neither "the original trustees named in the deed of 1808, nor "their heirs, nor the lot holders, have any right to have "the lot sold, and the proceeds of the sale distributed "among them or any of them. It must be held and "used in strict conformity to the terms of the deed by "which it was conveyed, and for the uses therein spe- "cially declared. Should it be diverted from those "uses, the terms of the deed, the heirs of General How- "ard would immediately become re-invested with the "title to the lot."

In the case of the *First Universalist Church vs. Borland*, 155 Mass., 171; one Clark, in 1854, for an express consideration of $900, conveyed by deed, certain land in the First Universalist Society and their assigns, or so long as the said real estate shall by said society, or its assigns, be devoted to the uses and support of those doctrines of the Christian religion embraced in the confession, etc., and when said real estate shall, by said society or its assigns, be diverted from the uses, intents, and purposes aforesaid, to any other intent, uses or purposes aforesaid, then the

title of said society or its assigns, in the same, shall forever cease and be forever vested in the following named persons. (Then follows a list of persons.)

"Where there is an invalid limitation over, the "general rule is that the preceding estate is to stand "unaffected by the void limitation. The estate becomes "vested in the first taker, according to the terms upon "which it was granted or devised. * * * The grant "to the plaintiff was to have and to hold, etc. These "words do not grant an absolute fee, nor an estate on "condition, but an estate which is to continue till the "happening of a certain event, and then to cease. That "event may happen at any time, or it may never hap-"pen. Because the estate may last forever it is a fee. "Because it may end on the happening of an event, it "is what is usually called a determinable or qualified "fee. The grant was not upon a condition subsequent, "and no entry would be necessary; but by the terms of "the grant the estate was to continue so long as the real "estate should be devoted to the specified uses, and "when it no longer be so devoted, then the estate would "cease and determine by its own limitations. * * * "Since the estate of the plaintiff may determine, and "since there is no valid limitations over, it follows that "there is a possibility of reverter in the original "grantor, Clark."

In *Esterbrook vs. Tillinghast*, 5 Gray (Mass.,) 17, a testator devised real estate in trust to apply the income to the maintenance of a pastor or elder in the church of the town where the testator resided, of a certain faith and practice, so long as the members of that church or their successors should maintain the visibility of a church in such faith and order. Afterwards the only two members at a meeting called by public notice, voted and resolved that they should no longer endeavor to maintain the appearance of a visible church. Held, that the church was thereby dissolved and

ceased to be a visible church, and that the trustee held the estate as a resulting trust, for the testator's heirs at law. The Court, by Metcalf, J., said:

"The devise to the defendant of the property in "question was doubtless a devise in fee, (*Cleveland vs.* "*Hallett*, 6 Cush., 407) and having been made to him "as trustee and for a specific purpose only, he holds the "property, since the failure of the trust by the extinc- "tion of the *cestui que* trust, not for his own benefit, "but for the deviser's heirs at law, and is answerable to "them for it.

Hill on Trustees (2 Amer. Ed.) 157, 185."

An authority which closely bears upon the case is that of *Cunnack vs. Edwards*. The Law Times 1 Ch. 386.

"Syllabus—In 1810 a society was established, to "raise a fund, by the subscriptions, fines and forfeitures "of its members, to provide annuities for the widows "of its members. In 1830 the rules were revised, and "the society conformed to the provisions of the friendly "societies—Act of 1829, but the object of the society "was not in any way altered. In 1848, Edwards be- "came a member and remained a member until 1878, "when he died a widower. Edwards was the last sur- "viving member. The last honorary member who, on "joining, disclaimed all benefit of the society for his "widow, died in 1879. The last annuitant died in 1892.

"The legal personal representative of Edwards, "having claimed the unexpended fund of the society "amounting to 1750 pounds;—

"Held—That the society was not a charitable in- "stitution to which the doctrine of cy-press could be "applied, and that on this point the fact that there "were honorary members whose donations were appli- "cable for the benefit of widows of members made no "difference; that the representatives of Edwards, sur- "viving member, were not entitled to the funds, neither "was the Crown entitled to them, as *boni vacantia*, but "that there was a resulting trust in favor of the mem-

"bers of the society, from time to time, of their re-"spective, legal, personal representatives, in shares in "proportion to the amounts contributed by each mem-"ber to the funds of the society."

This was an action by the trustees of a fund, to obtain the direction of the Court.

In March, 1810, a society called the Nelston Equitable Annuitant Society was established, for the purpose of raising from time to time, by the subscriptions of the members, and fines and forfeitures, a stock or fund, for the relief of widows of the deceased members of that society. By rule 16, these funds were to form the capital stock of the society, to be invested by the Treasurer in the names of the Trustees for the time being, upon approval of a majority of the managing committee or by a majority of the society, and by rule 35, it was provided that on the death of any member, after having been admitted four years and having paid his annual contributions and other payments required by the rules, and conformed to the same in all respects, his widow should be entitled to such an annuity as was set forth in the table for that purpose provided, so long as she should continue a widow.

Edwards was an ordinary member, and died in 1878, and at the time of his death was a widower, and was the last surviving ordinary member. There was only one honorary member, who, on joining disclaimed any benefit in favor of his widow.

There was no provision in the rules, as to the ultimate disposition of any unexpended funds after paying all the annuities. The last annuitant died in 1892.

The legal personal representative of Edwards claimed the unexpended funds, and the surviving trustees instituted

this action against that representative, and also the Attorney General.

Chitty, J., after reciting the facts in the case, after holding that the claim of the Attorney General that the funds might be applied *cy-pres*, as impossible, says as follows:

"The claims are, first, the representative of the sur-"viving ordinary members; secondly, the Attorney "General on behalf of the Crown; and thirdly, the "representative of the deceased member appointed to "represent for the purpose of this hearing, all the de-"ceased ordinary members. As a body the claim of "the representative of the last surviving member may "be disposed of in a few words. The society was not "a tontine society, and there is no ground for saying "that the fund belonged in equity, to the last sur-"vivor. There is nothing in the rules, or in any prin-"ciple of equity, applicable to the case on which this "claim can be raised. * * The contention for the "Attorney General was that the funds were *bona va-"cantia*, and that the Crown was entitled to them by "virtue of its prerogative. It is in virtue of this pre-"rogative right that the Crown takes the personal "estate of a man who, being a bastard, dies intestate "and without leaving issue. Such a bastard can have "no next of kin. The Crown's right attaches on the "proof of the bastardy, and no lawful issue of the bas-"tard--subject, of course, to the right of any widow he "may leave. But, in case of the death, intestate, of "the person born in wedlock, the Crown does not "take merely because there is difficulty in finding the "next of kin. An inquiry is directed, and sometimes "repeated, to find the next of kin, and it is not until "every reasonable step by advertisement and otherwise, "has been taken that the fund is ordered paid to the "Crown. The mere fact that there will be great ex-"pense and difficulty in ascertaining the equitable "owner of a fund is not, of itself, sufficient ground for "declaring the Crown entitled. The claim of the per-"son appointed to represent the deceased members gen-

"erally is founded upon the doctrine of resulting "trusts. Where a man provides a fund by way of "trust, for payment of a specified annuity to his widow "during her life, and makes no further declaration of "trust effecting the fund, the beneficial interest in the "fund or so much of it as is not required for payment "of the annuity, results to himself. The same doctrine "would apply to the case of several persons agreeing "to provide and providing such annuities for their "widows; there would be an ultimate trust in their "favor, when the purposes of the fund would come to "an end. Nor can I see how any difference could "justly be made, by reason of their raising by common "agreement such a fund, in different but prescribed "proportions among themselves. In as much then, as "all the purposes for which the fund of the society "was raised by the contributions of the members, have "been exhausted, and there is no indication to be found "in the rules as to what was to be done with the funds "when the specified purposes were worked out, I am "constrained to hold, according to the principles of "equity, that the doctrine of resulting trust applies. "It is immaterial that no actual declaration of trust "was made by the trustees in pursuance of rule 17 of "the society. * * * I therefore make a declara- "tion that in the events which have happened the funds "are subject to a resulting trust in favor of the ordi- "nary members of the society from time to time, or "their respective legal representatives, in share in "proportion to the amounts contributed by each ordi- "nary member to the funds of the society." * * *

The case just cited bears fully upon the case at bar. In one case the plaintiff's ancestors together with others dying in the society since 1836, and the present members, are equally interested in the "joint and indivisible stock," under the articles of 1836, and as such devoted it in trust as donors for purposes which have failed.

A most important case is the case of *Martha Hopkins et al. appellants, vs. William H. Grimshaw*, decided by the Supreme Court of the United States, at No. 18, October Term, 1896, (not yet reported), which arose upon a Bill in Equity by all the heirs of Stepney Forest, and by Horace S. Cummings, Trustee, against another heir, and William H. Givin Shaw, to enforce a resulting trust in, and to obtain partition of land conveyed by Forest and Redden and others, to Trustees for the Union Beneficial Society of Washington for a burial ground.

The Society was unincorporated under written articles prescribing its purposes.

The land was used for many years for burial purposes.

All the Trustees named as grantees being dead, Grimshaw obtained conveyance from Mrs. Forest and her daughter, Mrs. Brooks, her mother-in-law; from Wells, President of the Society, and from the heirs of the grantee Trustees.

Grimshaw then procured from the Board of Health leave to exhume the bodies, which he did.

The Supreme Court of the District of Columbia dismissed the bill without prejudice to the rights of the plaintiffs to claim such right, if any, as Stepheny Forest may have been entitled to in the real estate, as a member of the Society.

The Supreme Court of the United States, Mr. Justice Gray delivering the opinion, held:

> "The first inquiry which naturally arises is whether "the deed was for a charitable use in the legal sense. "If it was, the conveyance would not be open to any "legal objection by reason of the length of time during "which the trust might last, or because the Society "named not being a corporation.—*Ould vs. Washing-*

"*ton Hospital* 95 U. S. 303; *Russell vs. Allen* 107, U. "S. 163, 171. And the Trustees, although the deed "did not in terms run to their heirs and assigns, would "take the legal estate,—*Russell vs. Allen*, above cited; "*Potter vs. Couch*, 141 U. S. 296, 309; *Easterbrooks* "*vs. Tillinghast*, 5 Gray, 17, 21."

The Court proceeds to declare that the burial ground of this Society cannot be held to be a public charitable use,

"But the trust was restricted, in plain and une- "quivocal terms, to the particular Society to be bene- "fitted, as well as to the purpose of a burial ground, "adding (as if to put the matter beyond doubt) 'and "for no other purpose whatever.' The trust would end "therefore, at the latest, when the land ceased to be "used as a burial ground, and the Society was dis- "solved.—*Easterbrook vs. Tillinghast*, above cited; "*Reed vs. Slouffer*, 56 Md., 236, 254; *Second Univer-* "*salist Society vs. Dugan*. 65 Md, 460; *In re Rymer* "(1895–7, 1 Ch. 19, 31, 32.") * * *

"In the case at bar the trust created by the deed "having been terminated according to its express pro- "visions. by the land ceasing to be used as a burial "ground, and the dissolution and extinction of the So- "ciety for whose benefit the grant was made, there "arises, by a familiar principle of equity jurisprudence, "a resulting trust to the grantor and his heirs, whether "his conveyance was by way of gift, or for valuable "consideration."

In our case the purposes of the trusts are exclusive of every other than for the benefit and use of the Society in the maintenance of its principles as declared by its constitutions and laws. The titles held by the Trustees are bound by those purposes; and if those purposes have failed, then as in the Grimshaw case, the property reverts by way of resulting trust to all those owners of the "joint and indivisible stock," from 1836, as evidenced by membership, and the heirs and next of kin of those of them who have died as members.

The Master cites some cases as sustaining the assertion that the grants in this cause do not constitute a base fee. And among them are the following:

First Methodist Church vs. Old Columbia Public Ground Co., 103 Pa., page 608:

The covenant in that case was to convey in fee simple in trust for the sole use of the company hereafter to be formed for supplying water. The vendees covenanted that they should, upon erecting a hydrant at his own expense, have a supply of water from the reservoir for his own use. The water company was formed and the vendees released all their rights under the agreement to that company which did construct a reservoir of the size specified on the premises. The grantor or the vendor constructed a hydrant and used the water for some time, and then discontinued the use of it, and subsequently died. The water company discontinued the use of the reservoir twenty-five years after the agreement and conveyed the land to a corporation for church purposes. It was held that the estate conveyed originally was a fee simple and not a base fee.

This case is essentially different from the case at bar, as a reference to it will disclose.

Cook vs. Trimble, 9 Watts 15, only decides that a condition stipulated in a deed of conveyance may be enforced by ejectment, but a consideration even amounting to a covenant on the part of the vendee cannot. Part of the consideration for the sale was a comfortable support and living to be given to the grantor, his wife and daughter.

Kerlin vs. Campbell, 15 Pa., 500: Under the Act of Assembly conveyance was made in trust of an old court house and lots of ground for the use of the inhabitants of the County of Delaware, to accommodate the public service of the county; an absolute conveyance was made for valuable consideration, and the trustees made and executed a declaration of trust acknowledging the purchase money to belong to the county. A subsequent Act of the Legislature authorized the Commissioners of the county to sell the premises. The same were accordingly sold and conveyed for a valuable consideration. Held that the estate granted was not a charity or a base fee, but being granted by an absolute conveyance or a valuable consideration, the heirs at law of the first grantor were not entitled to recover the same from the last grantee. The grantor had received the full consideration.

Wilkesbarre vs. Wyoming Historical Soc.,
134 Pa. St., 616.

In this case the Borough of Wilkesbarre was authorized to sell lots of ground, first conveying to the society a lot of a certain size.

In executing this Statute, the borough added to the requirements of the Statute, a provision or clause in the deed, for the erection of a hall for the use of said society.

The Court held that the clause for the erection of a hall imposed no condition upon the title, and that the borough had no authority to introduce such a clause into the deed.

This case, evidently, has no bearing upon any question involved in this cause.

Petition of Sellers M. E. Church, 139 Pa. St., 61.

The case decides that a

"conveyance for a *charitable use*, does not cre-
"ate a conditional estate, but a trust for a *charitable*
"use, not liable to be defeated by non-use or alienation,
"in the absence of an express condition to that effect."

The case turns altogether upon charitable use, and Green, J., collates the cases, p. 67.

In our case there is no such use and therefore the case cited has no bearing.

Crawford vs Gross, 140 Pa. St. 297.

The property in this case was purchased by a few members who received certificates of stock for their advances. The property was held in trust.

The contest was between ordinary members and certificate holders. The Society became incorporated, and issued new certificates—Held that those certificates were equitable or vendor's liens.

We fail to see any bearing of this case upon any question raised in the case at bar.

We can safely say that no case has been or can be cited, which contravenes these propositions:

That a conveyance in fee simple of property to Trustees in trust for an unincorporated association, having no

limit to its contemplated life, and not formed for a religious, charitable, literary or scientific purpose, carries within its terms impliedly the provision or condition that when the trust fails, or the purposes of the society are abandoned, or the society has in any manner ceased to exist, is a grant of a qualified, determinable or base fee, and that when either of these contingencies have happened, and the trust fails, the property reverts to the donors, or their heirs and representatives.

VI.

Prior cases against the Harmony Society.

The Master claims that the land involved in this cause, is situated in, and this Court therefore is bound by, Pennsylvania decisions, relating thereto.

There is no such cause in Pennsylvania which lays down a rule of property; and there is no statute of this State affecting any question involved in the case at bar, which has received a construction by the Courts of this State. There is therefore nothing which precludes this Court from passing upon the questions involved herein, as of the first impression.

We confidently assert, that there is no such prior case, decided either in Pennsylvania, or in the United States Courts, which can justly be cited against us and the positions we contend for.

We submit to the Court that no case either affecting the Harmony Society or any other similar Society has been

cited, which involves a recognition of the *termination of a communistic Society by unlawfulness of trusts, failure of trusts, abandonment of principles, or by actual liquidation, and which seeks a general distribution of property among all entitled to distribution.*

And that the present bill, following these lines, is the only case within our knowledge, where these questions are raised, and that therefore the questions now involved are not to be ruled by any of the defendant's cases.

In every one of the cases cited, the plaintiff recognised the *existence* of the society, as a going concern; did not seek to have its life declared terminated; but sought only to make the defendant pay the plaintiff either the amount he had contributed to the society, or the value of his interest in the property, or compensation for his services. Each plaintiff sought an individual recovery or an individual relief, consistent with the continued life of the Society, and not one sought the appointment of a Receiver, a winding up, and general distribution of property.

In many of the cases in other States, the Society was either a corporation, or a religious, or charitable body, and therefore those cases are not relevant.

The first case arose in the State Court, at the suit of Peter Schreiber's administrator, and was in *account render for his share of the profits* arising under the joint transactions of the Society.

It went to the Supreme Court and is reported in 5 Watts, page 351.

The action declared for an alleged partnership, and *therefore affirmed the rightfulness of the partnership.*

At that time the only existing articles were those of 1805, 1821 and 1827, and they were of necessity the only articles offered in evidence. It is to be borne in mind that up to the date of that case and until the articles of 1836, it was the recognized feature of all the agreements that any dissatisfied member could *withdraw*, in which *event his contribution would be returned to him, in installments without interest.* The articles of 1836 were not in existence. Those articles changed the constitution, and thenceforth there was no *right* of withdrawal recognized accompanied by restoration of property.

Peter Schreiber in his lifetime had executed and delivered a deed to "George Rapp and his associates," dated August 28th, 1826, of all his property real, personal or mixed, brought by him into the society. He died in the society, *without exercising his right of withdrawal.* The intestate had also executed a *release* to the society *in the broadest terms of every suit, claim or demand against* Rapp and his associates from the beginning of the world.

There were no creditors of the decedent's estate.

No allegation of fraud or deceit was made as to the procuring of Schreiber's deed, or his release; nor that the society in its organization was *against public policy.* Judge Bredin *did* leave the question of fraud to the jury; but Chief Justice Gibson held that in so doing he committed an error—but an error of which the administrator could not complain.

And the learned Chief Justice Gibson said further that the only way the existence of the society could be attacked was that such existence was void from illegality.

The point in the case was disposed of by the Chief Justice as follows, viz.—

> "It is supposed, however, that *as the intestate had "power, by the articles, to secede from the society and to "take out of it whatever he had brought into it, the suc- "cessor to his personal rights, may exercise it as his "representative.* Such, however, are not the terms of "the articles; nor would a posthumous exercise of the "power consist with the disposition he thought fit to "make by dying in fellowship. * * * The right "of secession, therefore, is intransmissible; and were it "not, the intestate's release would be a barr."

The next case in order of time, arose in this Court at the suit of *Nachtrieb against Baker et al.* in equity, and was decided by Judge Grier, in 1847, in the Court below. On appeal his decision was reversed by the Supreme Court of the United States, reported 19th Howard, 126.

In that case Nachtrieb asserted his right *to an accounting for his share of the assets of the Society*, was confronted by his writing of withdrawal, dated June 18, 1846, and his acceptance of a donation.

The Supreme Court of the United States, in that case expressely recognizes the right of inquiry for equitable relief, to show that the

> "Rule of the leader, instead of being patriarchal, "was austere, oppressive or tyranical; his discipline "vexations and cruel; his instructions fanatical, and, "upon occasions, impious, his system repugnant to pub- "lic order, and the domestic happiness of its members; "his management of their revenues and estate, rapaci-

"ous and selfish, or dishonest; and that the condition "of his subjects was servile, ignorant and degraded, so "that none of them were responsible for their contracts "or engagements to him, from a defect of capacity and "freedom."

The Court further held, however, that in order to assert such claims for relief: "It was a necessary prerequisite that this bill should have been so framed as to exhibit such aspects of the internal arrangements and social and religious economy of the association. This was not done; and for this cause the evidence cannot be considered."

The caused passed upon the voluntary withdrawal of Joshua Nachtrieb from the Society, by a paper, which is as follows;

"To-day I have withdrawn myself from the Har- "mony Society, and ceased to be a member thereof; I "have also received of George Rapp two hundred dol- "lars, as a donation, agreeably to contract." "Economy, "June 18, 1846. JOSHUA NACHTRIEB."

And that paper was held by the Supreme Court of the United States to be more than an admission, and stood in a different light from an ordinary receipt. "The writing must be treated as the contract of dissolution between the plaintiff and the Society, of their mutual obligations and engagements to each other. No evidence of prior declarations or antecedent conduct is admissible to contradict or to vary it."

The character of the Association is found, by this decision to be as follows:

"*The members were associated and combined* by "the common belief that the *government of the patri-* "*archal age*, united to the community *of property*, "*adopted in the days of the Apostles*, would conduce

"to promote their temporal and eternal happiness. The "officers of the Society *surrendered all their property* "to the Society for the *common benefit.*"

The Court further say, after reviewing the pleadings:

"This statement of the pleadings shows that no "issue was made in them, upon the merits of the doc- "trine, socially or religious, which form the basis of "this association; nor any question in reference to the "religious instruction and administration, or the domes- "tic economy or physical discipline which their leader "and the other managers have adopted and enforced; "nor do they suggest any inquiry into the condition of "the members, or whether they have experienced hard- "ship, oppression, or undue mortification from the am- "bition, avarice or fanaticism of their guides and ad- ministrators."

It is therefore evident that so far as the Supreme Court of the United States is concerned, that had the pleadings shown such an issue, the Court would have considered the evidence, and if sustained, granted relief.

The case of *Speidel vs. Henrici*, in the Supreme Court of the United States, reported in 120 U. S., page 377, went off upon the *staleness of Speidel's claim*, the Court saying that a Court of Equity will not assist one who has slept upon his rights, and shows no excuse for his *laches*, in assorting them. The point is expressed in the syllabus as follows:

"A bill in equity against persons holding a fund "avowedly in trust for the common benefit of the mem- "bers of a voluntary association, living together as a "community, subject to its regulations, cannot, whether "the *trust is lawful or unlawful*, be maintained by one "who has left the community, and for fifty years after- "wards taken no steps to claim any interest in the "fund."

Spiedel's claim was based on contributions made under the articles of 1805 and 1827, and before the articles of 1836. In our case we claim nothing except in case of dissolution, and then as representatives of donors of property provided for by the articles of 1836.

In this case the Supreme Court of the United States distinctly held that the trust under which the assets and property of the community was held, *was an express trust* and totally inconsistent with the trust which the plaintiff, Spiedel, set up, to-wit, that the fund was held in trust for the benefit of the same persons, as individuals, though withdrawn from the community, living by themselves, and taking no part in its working.

It was distinctly stated that this decision does not rest in any degree, upon the judgments of the Supreme Court of Pennsylvania, and of the Supreme Court of the United States, in favor of the Trustees of the Harmony Society in suits brought against them by other members, because each of those cases differ in its facts, and especially in showing that the society had written articles of association which are not disclosed by this bill, and the Court refers to the cases of *Schreiber vs. Rapp*, 5 Watt, 351; *Baker vs. Nachtrieb*, 19 Howard, 126.

It is plain, therefore, that under the decision of the Supreme Court of the United States, the trust under which Rapp and his associates held the property in common, was an express trust, and second, that a bill appropriately drawn could attack the character of the trust and procure relief, unless the plaintiffs were barred, either by a release, as in the case of *Baker vs. Nachtrieb*, or by the staleness of their claim, as in the case of Speidel.

The bill in the case at bar proceeds upon widely different lines; avers the express trust upon which the assets were held; their great value; their waste; the termination of the existence of the society, by abandonment of principles, depletion of membership, unlawful processes of liquidation of debts, and the actual winding up of its affairs through the intermediation of the Union Company—the conspiracy to wreck, the processes by which the machinery of apparent management had practically centered in Duss, who absolutely swayed and governed the ignorant old women to whom he was obliged to resort to fill up his Eldership.

And the prayers *inter alia* are for a receiver, a marshalling of the assets and a winding up of the Society.

The Society Not Recognized as a Defendant.

The decision of the Supreme Court of the United States in the Nachtrieb case, in which there is a reversal of Judge Grier's decree, limits itself expressly to the point that the Bill in that case did not contain the averments to justify the admission of the evidence upon which Judge Grier had based his decree. There being no such allegations, the paper signed by Nachtrieb stood as a bar to his Bill. Judge Grier had arrived at no wrong conclusions from the evidence; his conclusions of law were unattacked. *But* the fact remained that both must be disregarded *because* that evidence and those conclusions could not be related to any appropriate allegation in the Bill.

It follows, therefore, that the decision of Judge Grier is the unreversed law of this Court, and binding upon the Master in this case in every respect, upon every question in this cause which was considered and passed upon in that decision.

The other authorities cited by the Master do not apply because they were all cases of attempts on the part of members to *either recover for services performed by them, or to get possession of property of societies which were in full life and being, and in none of them was there any allegation that the purposes of the society had been abandoned, nor was the claim to recover based on any claim of a reversionary interest consequent on an abandonment of the purposes.*

The case of Waite vs. Merrill, 4 Mo. 90, was an action against the Society of Shakers by a member *who had withdrawn, to recover the value of his services* on the ground that the agreement or covenant under which he had agreed to contribute his services and property, and released his right to reclaim any share thereof, was void as against public policy.

The Court held that the covenant between the members of the Shaker Society was not void and that the plaintiff was bound thereby, and that if it were illegal that the plaintiff could not recover on the ground of *in pari delicto potior est conditio defendendis.*

It was held further that the articles of agreement between the members were not void as against public policy.

1. *Because they did not prevent marriage*, but on the contrary marriage was *expressly* allowed; and that if there

were a contract not to marry it was not a *perpetual one*, but *simply endured while membership in the society continued.*

2. That in as much as any member *could withdraw* when he *chose*, it was not void because it deprived the plaintiff of the power of acquiring and protecting and possessing property in as much as it only changed the mode in which he chose to exercise and enjoy this right or power, even though he lost his property when he withdrew.

3. That civil tribunals have no jurisdiction over questions of *ecclesiastical belief.*

In this case it will be noted that the society was in *full force and vigor* and that the attempt was to recover on an *implied contract* for services, when an *express contract* expressly forbade such recovery and there is no question of abandonment or reverter.

The case of *Brown vs. Dale, 9 Ch. Div. Law. Rep., page 78*, is inapplicable because the contest there was, as to the right of members to *participate in the funds of the society*, who had been admitted *subsequently to a resolution dividing its property among existing members*, and there was no question *abandonment or reverter, or any claim of persons who had previously been members of the society, or their descendants.* In that case the society was a voluntary one and had no printed laws or rules regulating the disposition of the money, property or admission of members: but there had been a custom for the members of the company for the time being, or a majority at any meeting to exercise unlimited control over the management of the company's property, and that it had been the practice to admit *sons* of

members as of right attaining twenty-one years, and becoming freemen of the Borough of New Castle on Tyne; and under these circumstances the Master of the Rolls held that the fund should be divided among the persons who were members of the guild at the time when the resolution dividing the property was passed. At this time there were *no persons who were members or entitled* to be admitted members other than *the plaintiff and defendant.*

The case of *Grosvenor vs. United Society of Believers, 118 Mass.. 78,* was an action on a contract to *recover for services rendered* to the defendant society of Shakers from which the plaintiffs had been *expelled;* and here the whole question turned on the *legality of the expulsion,* the Court holding that under the covenant or articles of association the plaintiff had not an absolute right of support, but a qualified one, namely: that she was only entitled to support "*According to her needs and circumstances while standing Gospel Union and maintaining the principles of the covenants,*" and having been *rightfully expelled she could not recover.* Here there was no question of reverter or abandonment of purposes.

The case of *Burt vs. Oneida Community et al.,* 137 N. Y., Court of Appeals, page 346, was an action in equity brought by the plaintiff, a member of the *Oneida Communists, an unincorporated association, against the Oneida Community Limited, a domestic corporation,* and certain individuals alleged to be members of the Community. The relief sought was that an alleged *expulsion* of plaintiff from said Oneida Community be *adjudged void, and that he be adjudged to be a member thereof; that an alleged dissolu-*

tion of said Community be adjudged illegal and void; and that the Oneida Community Limited should be adjudged to hold the *property* in its possession in trust for the plaintiff and the other members of the *Oneida Community;* that the members of the latter be adjudged *partners or owners of such property, as tenants in common,* and that an accounting be had and a decree be rendered for a division and distribution of the same.

By the articles of association which were signed by plaintiff, each subscriber surrendered his individual property and it became an inseparable part of the capital of the Community; it was also entitled to all the earnings of its members; each member was at liberty to withdraw at any time, but in case he did so he was not entitled to take or demand any share of the joint property. There was also a material stipulation that *no member* would *ever bring an action* or proceeding to recover wages or compensation for services or to recover any property contributed, or make any claim or demand therefor. Plaintiff had never *contributed any property* but had contributed his services as traveling salesman. In 1880 he left and entered the service of a rival company. In 1880, after the plaintiff left the society, *nine members thereof took out a corporate charter.* The object of the corporation was to carry on a *general manufacturing and agricultural business,* including all the different kinds of business in which the community was then engaged. The capital stock was $600,000, which fairly represented the net value of its property, and since the incorporation of the Oneida Community Limited, had carried on all the different kinds of business which they had carried on first as an unincorporated association.

Among these members were those *who held the title* to the real property of the community. The property of the community was all turned over to *this corporation* and the capital stock was taken by all the members of the Community, and thereafter the unincorporated association did not engage in any business nor did it undertake to discharge any of the obligations in its covenants with the members. Counsel for plaintiff contended:

(1). That plaintiff was illegally expelled; that the Oneida Community being a mere voluntary association is to be deemed a mere partnership.

(2). That the real estate was acquired and contributed by the members for the use, benefit and profit of the association or partnership while it lasted, and no valid trust could have been created by agreement of the parties so as to vest the same in the property holders as trustees for the uses of the association. The only trust was that which resulted from the acts of the parties—the resulting trust created by law.

3. That the conveyance of all the property of members of the Community by the property holders to any persons except a full member, was illegal; that if the property holders were authorized to convey it to a corporation, the corporation was not capable of holding it and using it for the purposes of the Oneida Community.

4. That the conveyance of the property to the corporation was fraudulent.

The Court expressly said that it decided the *question on the ground* that this was a business compact and was a *business community*, and as such it was not prohibited by

any statute, nor was it in contravention of any law regulating possession, ownership or tenure of property; that it imposed no unlawful restraint upon the alienation of property for the title of *real estate could be transferred at any time by the united action of the members* if they saw well to do.

2. That by the articles of association the plaintiff acquired no divisible interest in the property of the Oneida Community, but only a right to its use while he remained a member; that it was a joint holding of the property by the members of the community with this qualification, that upon the death or withdrawal of a member, no share or interest passed to him or his personal representatives, but they who survived or remained continued to hold jointly the entire property in *solidium* and that as the plaintiff had withdrawn, his action must fall.

3. That whether or not the incorporation of the society and the turning over of the property of the association to such corporation amounted to a *dissolution* was not decided, and that if it were found as *a proposition it would not help the plaintiff because he had ceased to be a member of the community before this section was taken, and his property rights were not prejudiced by it.*

This case is distinguishable on several grounds.

1. The Court places its decision expressly on the ground that the plaintiff withdrew from the community without cause, while it was a *living organization*, and that his rights were by that act determined. There was therefore no question or no decision as to what would have been the rights of persons who died while members in the case of subsequent abandonment of the purposes of the society,

or in case it had subsequently ceased to be a living organization.

2. The plaintiff in this case sued and based his sole right of action on the fact that he was a *member of the society* and the Court found that he was not a member, and this question is therefore not passed upon.

3. A conveyance of the property of the unincorporated Community to the association was joined in by every member of the Community except plaintiff and the corporation carried on the same business for the same purposes as the unincorporated association, and it was a mere change in *name* and not a substantial change of ownership.

4. The Court did not pass upon the ground of *public policy*, but simply regarded the incorporated association as a *business community* and refused to go back of it, and held that it was a mere matter of contract between the parties.

5. The Court refused to pass upon the question whether the transfer of all the property to the corporation was a dissolution or not because the *plaintiff could not raise the question* on account of want of interest.

6. Thus, while the Court say that upon the death or withdrawal of a member no share or interest in the property passed to him or his personal representatives, the case cited by the Court sustaining this position expressly put that decision upon the ground that the association was a *living* organization, and was following out its purposes and intent and the whole case is decided on the theory that it was in *full life and existence at the time*. And in effect, the whole decision was simply a denial of the right of a member who had lawfully withdrawn to wind up a going-business partnership.

In the case of *Gasley's et al vs. The Separatists Society* of Zoar, 18 Ohio St. Rep. 144, a member of the society who had withdrawn asked for a partition of the property which was held in common, and the Court held that she had no separate or divisible interest therein which would entitle her to relief. There was no question of *abandonment* in this case. *The Society* was in full operation. It was urged in this case that there was no grantee capable in law of holding this property, and 2nd—That the articles were void as creating perpetuity. *The Society was incorporated under the laws of Ohio in 1832.*

The Court, while not passing upon these questions on the ground that the plaintiff *had no interest which would enable* him to raise the question, on page 154, said that if the attempted transfer to the collective membership for the exclusive use of the society were void as creating perpetuity the property *reverts to its former owner*, but does not devolve upon incoming members subsequently, in whom it was not previously vested and who acquired no separate interest therein by the articles, still says that there is a grave question "whether the perpetual diversion of the property and its proceeds to the uses of the society, qualified by the powers delegated to the directors and the majority of the members creates such a perpetuity as avoids the surrender." (page 156.)

In this case the property was purchased by one Goesele *in his own name*, and subsequently his associates were allowed to take title upon *paying for the property by their labor, etc. Subsequently to* this however, it was declared that the property was held in common and the members re-

nounced all their personal interests and invested the property in the society with the declaration that the property should be and remain the property of the society forever. There was no gift *here* by any individual but simply a renunciation and a gift to the society as such. The case simply decides that where a member of such a society withdraws he is not entitled to any partition of the property, while the society *remains in existence* and fulfilling the object for which it was erected.

And the society was incorporated in 1832.

In Goesele vs. Bimeler, 14 How. 589, it was held that the conveyance of the property of the defendant society was not void as creating a perpetuity, on the ground that the members of the society acting unitedly could *sell the* property and that in the present case the property was *absolutely* the property of the *the society* and was only managed by a *Board of Directors and was incorporated*, and there was no restraint.

In our case the legal title to the property is vested in a *self-perpetuating board of trustees* who have no other power than to change investments and when they sell land they are required to hold the proceeds in the same trust as they hold the land.

The Master in his report quotes the grant continued in the agreements of 1805 and 1827, and thereupon avers "that this does not create a limited or base fee."

We have never alleged they did—Under both of

these agreements, individual members had the right of withdrawal from membership and to receive the property contributed back upon such withdrawal without interest.

The Master wholly fails to consider the articles of 1836, upon which alone we base our contention. We repeat that the grants of 1836, do

1st: Merge all prior contributions of money, land and labor, and all future acquisitions, into one "joint and individual stock."

2d: That all the then subscribing members and all future subscribing members, were equally interested therein.

3d: That all acted in putting that stock, lands, moneys, goods, proceeds of labor, into the hands of Trustees, by titles in fee and absolute for the benefit and use of the Society.

4th: That there was impliedly and necessarily in such grants, the provision that when the trust failed, the fee and absolute title thereto should revert to those who parted with it in trust—namely the members since the making of the grants living, and the heirs and legal representatives of members dying in the Society.

5th: Because the terms of the Trust provide no remainder over, makes no scheme of tontine or joint tenancy with survivorship, or any distribution whatever in the event of the failure of the trust, and that therefore necessarily the grants are limited or base fees.

This "joint and indivisable" stock comprehending all the present and future property of every description, is subjected to the trusts declared in the articles of 1827, be-

cause the articles of 1836, re-affirm those of 1827, except the 6th section, relating to restitution.

Therefore the trust declared in the first article of the agreement of 1827, defines its terms, from 1836 down to 1847 to wit: "As a free gift or donation for the benefit and use of the said association;" and by the agreement of 1847—article 6th—(65) the property is to be held and deemed the common property of said Society, and each Trustee then and thereafter appointed disclaims all personal interest therein, "other than that of a member thereof."

Prior to 1836—viz: in 1825, Frederick Rapp, the then Trustee (M. R. 142), executed his declaration of Trust; and on July 5th 1834, George Rapp his successor, and Baker and Henrici, George Rapp's substitute, executed their several declarations of Trust (M. R. 145), fixing absolutely the titles, removed wholly from personal interest, in and for the benefit and use of the Society, without remainder over.

Suppose the Society dead. Where then by its terms is the property of the Society to go.

In our case the estates are taken upon the trust that in the event the trusts fail or the society is dissolved by process of law or by voluntary dissolution, or by abandonment of purposes, or from any cause, they shall go in some direction by resulting trust or to survivors, or by *escheat* to the Commonwealth. Nobody will contend that it is part of the Trust, that in such events the Trustees acquire a title for their own use.

VII.

The Trusts Do Not Create a Scheme of Tontine.

Assuming now, for argument's sake, that the property of the Harmony Society is in the custody of this Court for distribution, the right of the titular plaintiff to distribution depends upon two questions;

1st. Does this property pass by survivorship or by tontine to the last surviving member?

2nd. Or does it *escheat?*

Either joint tenancy with right of survivorship, or tontine, must be the result of *express agreement.* They cannot be presumed by construction.

Examine each and every one of the articles of this society, and so far from finding any provision for the ownership of the property in case of illegality or dissolution, you will find nothing except the contemplation of an enduring and never-ending existence. No provision is made for a termination of existence.

Survivorship is under the ban of the law.

We quote from the Act of 5th of March 1812, Section 1, 5th Smith, 395:

> "If partition be not made between joint tenants, "whether they be such as might have been compelled "to make partition or not, or whatever kind the estate "or thing holden or possessed, be, the parts of those "who die first will not accrue to the survivors, but shall "descend or pass by devise and shall be subject to "debts, charges, curtesy or dower or transmissible to "executor or executors, and be considered to every other "intent and purpose in the same manner as if such de-

"ceased joint tenants had been tenants in common; "provided always, that nothing in this Act shall be "taken to affect any trust estate."

Trustees only take by survivorship, and they alone are excepted.

There is no arrangement in the articles that the last survivor is to receive the whole.

The essence of tontineism consists in reserving for the last survivor among several investors the profits realized from their common investments. And this demands express written covenant.

Neither survivorship, nor tontine can be presumed.

We might concede that while the Society exists consistently with its principles, and in good faith, and in accordance with the law, it may hold and enjoy the common property; yet when it ceases to exist, and the time for distribution comes, the members do not take the property in severalty as survivors, but distribution is to be made equally among all the members signatories of the articles of 1836, those living, and the heirs and next of kin among those dead.

To hold otherwise is to introduce into the articles, provisions not to be found there, and to construe them, so that Duss, potentially being the last survivor, takes those vast estates as his own; and he who came into the Society in 1890, a poor man—who never contributed one dollar to the funds of the Society—will find himself enriched of the estate or those who for many years contributed to the wealth of the Society by hard labor, and who died in the Society in full membership. What merit does he possess? What equity can he urge?

Such a construction has been acted upon by him. He

has admitted no new members since 1892. He has depleted the funds of the Society in the purchase (by paying large sums,) of the interests of seventeen members in full health and vigor, solely with a view to hasten this survivorship. He has yielded to the temptation described by Judge Grier, in his opinion in the Nachtrieb case.

That learned Jurist, who had before him Henrici, Baker and all the old members of the Society, and was made thoroughly acquainted with the articles of 1836, and the preceding articles, with the faith, beliefs and purposes of the Society, held that it was not then and "*had not been de-*"*termined* that ultimately all the property of the Society is "to vest in one or a few of its members."

Commenting upon a construction which might in the future be made that survivorship existed, he says:

> "*Unless human nature should be proof against the* "*strong temptation to hasten such a result*, the dissolv-"ing element would be always at work. The unwritten "rules of the Society inconsistent with natural rights "and liberties as seen beyond its own limits, the death "of its members, the expulsion of others with or with-"out cause and the prohibition of marriage, and the "lawful intercourse of the married, would in time so "reduce the community in numbers as to make it expe-"dient and proper in the opinion of the survivors to "dissolve and divide the possessions. It is not meant "to infer that any such ulterior result is projected, or "that in view of it, it in any way influenced the pro-"ceedings against the plaintiff (Nachtieb); it is noticed "simply for the purpose of glancing at an undisputable "and imputed right which will attach to each member "of the community at its dissolution; an event it may "be near or remote; but which not unreasonably, such "member may think may happen in his life time, and "to value accordingly, with its disadvantages if any, the "privileges of membership."

This Court is now called upon, *and for the first time by any Court*, to "ultimately determine" that all the property is to vest or not to vest in one or a few of its members.

This Court can find no call therefor in any written provision in any of the articles. Duss and the Eight others left have no rights which this Court is called on to respect except in and by the articles themselves. Apart from them, he and his few retainers cannot be heard in this Court. He and they must show something in the *articles themselves* to support the contention of survivorship or else it does not exist.

All his right and theirs must exist within a *living* society—a continuing society as provided by the articles themselves.

The law relating to *escheats* does not apply to this property.

Ordinarily it operated only in the absence of inheritable blood. Here there is inheritable blood.

In the statutes relating to religious, charitable, scientific and educational purposes, an *escheat* is declared only when *corporations* for such purposes have exceeded the limitations of their powers as defined by those statutes. A corporation can of course have no next of kin; it possesses no inheritable blood. But an unincorporated association preserves the individuality of its members and their inheritable qualities. And there is no *escheat*, as long as there are heirs to take.

The Court below sustaining the Master, concedes as we understand it, that the Trusts are established for the society *as a society*, and not for the members of the society *as members*.

And in this view it is sustained by authority:

The case of *Kain vs. Gibbony* 101 U. S, 362, cited by the defendant's counsel, held void a gift by will to "Richard V. Wheelan, Bishop of Wheeling, or to his successor in said dignity, upon a trust that in the event the testatrix should afterwards become a member of any of the religious communities attached to the Roman Catholic Church, and remain so at the time of her death, the said Wheelan, Bishop, and his successor in said dignity was constituted a trustee for the benefit of the community of which the testatrix might be a member. The said property or money to be expended by the said trustee for the use and benefit of said community. The testatrix became a member of the community known as the Sisters of St. Joseph which was unincorporated.

Justice Strong held, among other things, as follows:

"That is an *unincorporated association*, and it is "the association as such and not the individual mem- "bers who composed it when the testatrix died which is "declared to be the beneficiary * * * Its mem- "bers must be constantly changing and it must always "be uncertain who may be its members at any given "time. No member can assert claim on individual ben- "efits from the bequest, or assert that she is a *cestui que* "trust; and the community having no *legal* existence, "can never have *standing in court to call a trustee to* "*account*. This bequest is, therefore, plainly invalid "unless it can be supported as a charity, and it is far "from evident that it is a gift of charitable uses. It "looks more like private bounty. Charity is generally "defined as a gift for a public use. Such is its legal "meaning, and here the beneficial interest is given to a "religious community, but not declared to be for re- "ligious uses. There is nothing in the will to show "that aid to the poor or aid to learning, or aid to re- "ligious or to any humane object was intended."

VIII.

As to the Title of Appellants.

The Master has seen proper to make three classifications, in any one of which Plffs. might consider themselves to be,

> "First—Those who withdrew from the Society be-
> "fore the execution of the agreement of 1836.
> "Second—Those dying in the Society before that
> "time.
> "Third—Those who died, members of the Society,
> "after having joined in the agreements of 1836 and
> "1847."

We disclaim any pretense of right under the first two paragraphs of this classification. We do not pretend to assert any right to participate in distribution, under any ancestor, who withdrew from the society before the agreement of 1836; or who died in the society before that time. We make no pretense of claim based upon any contribution by any ancestor prior to 1836, nor do we claim to recover the *amount* of any contribution by any ancestor since that date.

Our claim is based wholly and solely upon the articles of 1836, wherein all former and all future contributions of lands, goods, money and labor were converted into a "joint and indivisible stock." Thereby all the then members and all future members signatories to the articles of 1836 became as against all the rest of the world equal owners thereof; and by their act and deed as donors confided this joint and indivisible stock to trustees for the use and benefit of the society.

Upon the failure of this Trust, seeing that no provision is made for such event; that there is no joint tenancy with survivorship in the members nor scheme of tontine to whom can the property of the Trust go except to those who had been the owners, and who only parted with their titles for the establishment of the Trust?

The second clause of the covenants of the supplementary articles of the 31st day of October, 1836, provides that

> "All the property of the Society, real, personal "and mixed in law or equity, and howsoever contrib- "uted or acquired, shall be deemed now and forever "*joint and indivisible stock.* Each individual is to be "considered to have finally and irrevocably parted with "all his former *contributions* whether in land, goods, "money or labor; and the same rule shall apply to all "future contributions whatsoever they may be."

There was thus established an *equality of ownership* by all members of the Society signing the agreement and all subsequent signatories. This ownership is controlled by trusts and conditions in those articles and in other preceding articles.

Justice Grier in the Nachtrieb case says (p. 23 Grier's opinion) of the articles of 1836, and of the property of the Society;

> "It was held by the Superintendent in trust for "the common use and benefit of all its members as "joint and individual stock. *The complainant's inter-* "*est was therefore an equal undivided interest of all* "*that property* to be determined *after the settlement of* "*all just claims against the Society by the number of* "*its members.*"

This construction was not doubted in the Supreme Court, for the cause passed off on other grounds.

Christian Swartz, one of the Plaintiffs, claims as the sole heir and representative of the following persons members of the Society in 1836 and signatories of the agreement of 1836 as aforesaid, and dying as such members after 1836, viz:—

Plaintiff's father died intestate, July, 1858; his mother intestate February 11th, 1857 leaving six children—all of whom were members, and died members (except the plaintiff) as follows:—without children and intestate,

Fredericka, January 11, 1857.
Maria, May 26, 1878.
Louisa, March 29, 1889.
Joel, ———, 1858.
Joseph, June 25, 1889.

Anthony Koterba, claims through Andreas Koterba, who died in Economy, a member, May 25, 1880.

David Strohaker: his father died 1867, and his mother in 1875, both dying in the Society; his aunt died a member in Economy in 1865.

Allen Shale and G. L. Shale, claim through their grandfather who died a member of the Society in 1855, and through their uncle who died in Economy in 1837.

Whatever title these people had since the 31st day of October, 1836, in the property therein equalized in ownership *descendible under the intestate laws of Pennsylvania*,

has vested in the plaintiffs and they are therefore as heirs and next of kin competent parties to this bill.

The Master has found the heirship of the above named plaintiffs in accordance with the foregoing statement.

IX

Are the Plaintiffs barred by Lapse of Time?

The Master's report presents and endeavors to force upon us a false issue to some extent. The position taken therein, is that if the agreements of 1805, 1827 and 1847, are void as creating a perpetuity, or because the society is unincorporated, then the plaintiff can have no claim to it at this time, because the grants were void at the time they were made; that the last of these agreements was signed by our ancestors more than fifty years ago, and if any property was contributed by them it was at that time, and possession was then taken by the society and held adversely by it ever since.

But we make no claims for individual contributions made by our ancestors at any time, either under the articles of 1805, 1827 or 1847. The only claim we present is that under the articles of 1836, a "joint and indivisible stock" was created in which all the then and all the subsequent members became equally interested, and being equal in interest donated it in fee simple and absolutely to trustees for the use and benefit of the society. That when the purposes of that gift failed for any cause, the gift of itself reverted to those who gave it, their heirs or legal representatives, and not to the few or the one member who happened

to be the surviving members or member of the society living at the time of such failure.

This proposition of the Master pre-supposes that there was a moment of time when our ancestors or ourselves were judicially fixed with knowledge and impressed with the equitable duty of action that the grants were void, because of the badness of the Society's purposes, its incapacity to take and hold property, and because the grants create a perpetuity, and that that moment of time began with the creation of the society; or the creation of the Trusts. And the conclusion therefore is, that a society admittedly bad, as his argument assumes and violative of public policy; a society incapable in law of taking property either directly or indirectly—a society which is the beneficiary of grants admittedly in defiance of the laws against perpetuities, may never be declared dissolved by a Court of Equity, because such decree had never been sought for in the past. It is a *living thing* which may plead laches or lapse of time, against one who seeks to separate for himself a portion of the property held by the living organization. A void community, an association violative of law, can have at no time a claim in equity, to continue to be regarded as not void and not violative of law, because it had for years escaped an earlier attack. Upon the hypothesis of the Master's proposition, the society is a wrong doer, and because it has escaped thus far, it has acquired a legal right to escape forever.

Statutes of Limitations, the statute of frauds, the doctrine of laches, and of estoppel, are all intended to *prevent* frauds, and not to *protect* and *sustain* them.

X

Does the Agreement of 1836 Bar Plaintiff?

The Master (180-181) holds that the plaintiffs, whose ancestors died members of the Society after the articles of 1836 have no claim on the property of the Society.

> "Because they had by that agreement expressly "renounced for themselves and their heirs all right to "claims anything on their withdrawal or death.

This is a misconception we respectfully submit.

The paragraph is as follows. (59:)

> "2nd. All the property of the society, real, per- "sonal and mixed, in law or equity, and howsoever, con- "tributed or acquired shall be deemed, now and for- "ever, joint and indivisible stock. Each individual is "to be considered to have finally and irrevocably parted "with all his contributions, whether in land, goods, "money or labor; and the same rule shall apply to all "future contributions whatever they may be.
>
> "3rd. Should any individual withdraw from the "society, or depart this life, neither he, in the one case, "nor his representative in the other, shall be entitled "to demand an account of said contributions, whether "in land, goods, money or labor, or to claim anything "from the society as matter of right. But it shall be "left altogether to the discretion of the superintendent "to decide whether any, and if any, what allowance "shall be made to such member, or his representatives "as a donation."

1st. The members parted with their individual interest then existing in the property and converted into "joint and indivisible stock." This was necessary to clear the title of the trustees.

2nd. The 3rd paragraph deprives members of a right to individual accounting for the amount of their contributions, or to claim anything as a matter of right from the Society.

We are not demanding any accounting from *the Society* for any contributions of lands, goods, money or labor, or claiming anything from *the Society* as a matter of right.

Our whole claim is that the Society is defunct; that the Trusts have failed, and that the property must go somewhere. As its destination is not fixed by the articles, it must go to *all* the membership then living and those who died in the Society since 1836 and their heirs by way of resenting trust, as donors of the grants.

The paragraphs cited by the Master do not conflict with our rights, and the Master errs in applying those paragraphs adversely to the claim of the plaintiffs in this cause.

THE HARMONY SOCIETY HAS CEASED TO EXIST

The career of John S. Duss is remarkable. Without previous membership, without contributing any means whatever to the already vast properties of the society, he became on the same day, January 24, 1890, both a member of the society and a member of the Board of Elders.

On July 28, 1890, he became Junior Trustee, Jacob Henrici, the Senior Trustee, being an octogenarian, and in feeble physical condition.

On the death of Father Henrici, which occurred on December 25, 1892, Duss became Senior Trustee. In a short time thereafter, the new Junior Trustee sold out, and then Duss became both Senior and Junior Trustee, and we believe he has adopted the title of "Patriarch."

He was thirty years of age at the time of his admission.

In less than three years he had acquired absolute control of all the trust properties of the society, as technical trustee and dominant governor and control of the persons constituting the membership, the policy and affairs of the society. There was no one to say him "nay."

These estates are found by the Master (240) exclusive of the property at Economy and Leet Township, to amount to $1,707,952.31. The three thousand acres of Economy land, &c. not included in this total, highly developed for oil, with several hundred houses, factories, mills, erected thereon, is worth at least $3,000,000. No property in the vicinity of Pittsburgh is more eligibly situated; it possesses more than two miles of river frontage; but eighteen miles below Pittsburgh, and has excellent railroad facilities.

This young man, then, accountable to no person, has as exclusive control of this estate as any private man could have, short of the legal title in himself. His expenditures for members is limited to the food, lodging and clothing of a few old people, whose lives had not led them to be dissatisfied with plain living.

The expectation of being the last surviving member was a reasonable one. The belief at that time was a general one that the grants to Trustees of the properties created a joint-tenancy in the members with right of survivorship;

that whoever did so live, would take them all as his own, cleared of the trusts.

The motive to so survive was natural, and necessarily dominant. We confidently say that not an act has been done since Duss became an Elder, which he could control, that did not have the accomplishment of that survivorship, and the acquisition of the property as the objects.

The situation is admirably described by that learned Jurist, Grier, J., in his opinion filed in the Court below, in the case of Nachtieb against the Society:

> "Unless human nature should be proof against the "strong temptation to hasten such results, the dissolv- "ing element would be always at work. The unwritten "rules of the Society inconsistent with natural rights "and liberties as seen beyond its own limits, the death "of the members, the expulsion of others, with or with- "out cause, and the prohibition of marriage and the "lawful intercourse of the married, would in time so re- "duce the community in numbers, as to make it expedi- "ent and proper in the opinion of the survivors to dis- "solve and divide the possessions * * *

Duss had before him at the time of his accession to power the full declaration of the purposes and principles of the Society—constituting the very reason for the foundation and continuing existence of the Society—as fully set out in the Articles of 1827, viz:

1. Christian fellowship.
2. Apostolic commity of goods.
3. Patriarchal Government.

He had also full knowledge that those articles, as well as those of 1836, had been made part of the articles of 1847, and that all the properties, lands, goods, monies and fruits of labor from 1836, down, were converted into a "joint and

indivisible stock," which was placed in the hands of Trustees in trust for the benefit and use of the Society, and that that joint and indivisible stock was in his hands *only* as Trustee under the trust declared.

He also knew that that benefit and use was the maintenance and welfare of the society based upon the purposes and priciples declared in 1827, and solely for which the Society was formed,

He knew of the fact of celibacy as a principle of the Society, and he knew of its absolute necessity to the continued life of a communistic Society.

And he also knew of the power of admission of new members—equally a necessity for the maintenance and life of a communistic Society.

CONDUCT OF DUSS.

Since Duss became the sole expression of power, the sole Trustee, he has destroyed the Society.

Communism of Property—He has it all, less the expenses of maintaining five or six old people, of peasant extraction, laborers in their working lives, and with plain tastes, easily and economically gratified.

The foundation principal of celibacy is discarded. He lives with his wife and his family, in the Great House at Economy.

He has abolished the Community. For a community implies numbers—The very code of government of 1847, is

based on a governing body on the one part, and people to be governed on the other. Every available living member, females except himself, are needed for the Board of Elders, and there are none others upon whom the government is to be exercised.

He has admitted no new members since 1893.

He has purchased the proprietary interests of seventeen able bodied and comparatively youthful men--whose ages were menaces to him, for an average sum of $5,000 each, and has in violation of his trust, abstracted the trust funds to pay them. This was an act of liquidation, of partition—a setting apart to the vendors their shares of the whole estate as appraised by them and by Duss, leaving to himself the residue enhanced by his cheap bargains, for himself.

He has recognized as indebtedness of the Society an amount of $1,500,000, claims which were in no view binding upon the Society, and has diverted the Trust monies in his hands to the payment of the same.

He has conveyed every foot of land of the Community to a corporation of Pennsylvania known as the Union Company, and taken for it its capital stock—so that the Society as such has neither property of the Trust, nor the form of government provided by its constitution.

In no one sense, nor in any view, does the Harmony Society exist within the limitations of purposes and principles and the mode and form of government prescribed by its constitution.

THE PRINCIPLES OF THE SOCIETY ABANDONED.

We submit the evidence discloses that not one of those principles or purposes survive.

Numbers form an *essential* feature of a community, and of this community, So the articles of 1821 provided for the admission of *new members*. The articles of 1847 confer power on the elders to admit new members.

Not one new member has been admitted since 1893. Duss has purchased at prices averaging several thousand dollars for each, the interests of seventeen members, all of whom except Fredericks, were healthy and vigorous, and none exceeded a moderate middle age. Their possibility of life was almost as good as that of Duss and his wife. That depletion has never been made good.

Look at this statement:

In 1805 seven hundred and fifty persons constituted the Society and built the town of Harmony, in Butler County. In 1827, 637 persons signed the articles of that date. The articles of 1836 bore the signatures of 448 persons; the treaty of 1847, the signatures of 375 persons; those of 1890, the signatures of 44 persons, of whom 26 were women; those of 1892, declare the numbers to be 34 persons, of whom 18 were women. Those of 1894, the names of 18 persons—13 of whom are women.

The surviving members now are J. S. Duss, Senior Trustee and Junior Trustee, age 39, joined 1890.

Board of Elders:

Susie C. Duss—	Age 38,	joined	1890.			
Frederika Muntz—	" 77,	"	"	can't	speak	English.
Caroline Molt—	" 54,	"	1887	"	"	"
Barbara Boesch—	" 80,	"		"	"	"
Katrine Nagel—	" 58,	"	1887	"	"	"
Franz Gillman—	" 77,	"	1887	"	"	"
Mrs. Hermansdoefer	" 47,	"	1890			

Members of the Society not Elders:

Christina Rall, 77 years of age. " " "

Except Duss no men remain in the alleged Society save Franz Gillman—a German aged 77 years; ignorant, and who joined the Society in 1880. He can neither read or speak English though in this country for nearly 30 years. His examination on page 575. shows him to be practically an imbecile and for this reason no one remains to fill the position of Junior Trustee, as required by the articles of association and Mr. Duss is the absolute ruler of the society's external affairs without check, hindrance or supervision. Excepting the aged Gillman the Board of Elders is composed entirely of women, not one of whom is competent to act, excepting possibly Susie C. Duss, the wife of Mr. Duss the society's only Trustee. The majority of these women are old and only two can speak English. Within a year it is safe to say half will die—leaving the alleged society utterly without members save on the board of Elders, who will be bereft of all power of action under the quorum required by the articles of association, even if they make any pretense of a continuation of the society.

Since 1895 seventeen of the most active, intelligent and worthy members of the society were bought off by Mr. Duss,

accepting money and real estate ranging from $4,000 upward, and since 1890 eighteen members have died, while on the other hand since Mr. Duss became Junior and afterwards Senior Trustee, *not a single new member has been admitted, but one*, with the result that *he and the decrepit Gillman alone remain as the male* members of a society once having an active membership of *nearly one thousand*, which filled the large town of Economy with its hundreds of houses and many streets. Now the remnant will scarcely fill the rooms in the Great House.

Members who retired while Duss was Senior Trustee.		**Members dying since 1890.**
Hugo Miller, March 8, 1893,	$5,000	John Worth,
Julius Stickel, Mar. 29, 1893,	1,200	Kershbaum,
Paulina " Mar. 29, 1893,	1,200	John Lenz,
Bertha Geratch, Mar. 29, 1893,	1,200	E. Woefel,
Jacob Nicklaus, May 5, 1893,	5,000	M. Staib,
Henry Feucht, May 16, 1893,	5,000	H. Fishern,
Margaret Feucht, May 16, 1893,	5,000	J. Henrici,
Benj. Feucht, May 16, 1893,	5,600	G. Lauppe,
Rebecca Feucht, May 16, 1893,	5,600	J. Scheib,
Tirze Feucht, May 16, 1893,	5,600	E. Beck,
Sig. Stievator, May 17, 1893,	5,000	D. Hoer,
M. J. Fredericks, June 5, 1893,	5,000	S. Wolfangel,
B. Platz, June 9, 1893,	5,000	C. Hermansdoerfer
Christina Hoerer, June 23, '93,	2,500	M. Diem,
Leonhard Hoerer, June 23, '93,	2,000	P. L. Wolfangel,
Eliza Sieber, June 29, 1893,	4,000	R. Lautenschlager,
Samuel Sieber, July 6, 1893,	1,000	G. Rietmueller,
		E. Kellerman.

This society is recognized as a "Community" in the articles of 1805; of 1821; of 1827; of 1836—It is styled an "association" in those of 1847; of 1890, 1892 and 1894.

Is it not farcical to call these nine persons—constituting the formality of a Board of Elders and a Board of Trustees with no membership to govern or control—in number not exceeding an average family—to call these a "community"—an "association" a "society"? It is almost an affront to common sense, and to the significance of language.

Here is the testimony of the only living male member (except Duss)—Franz Gilman, an elder:

"Testimony of Franz Gilman.

"Franz Gilman, called by plaintiff's, being duly "sworn, testified as follows, through the interpreter:

"*Direct Examination by Mr. Schoyer:*

"Q. What is your full name ?
"A. Franz Gilman.
"Q. What is your age ?
"A. Sixty-six years.
"Q. Do you speak English ?
"A. No.
"Q. Do you read and write German ?
"A. In German I can some.
"Q. Where were you born?
"A. I was born back of Pommern, in the King-"dom of Prussia.
"Q. When did you come to this country?
"A. In 1873.
"Q. When did you come to Economy?
"A. In 1876.
"Q. When did you join the society?
"A. In the year 1880.
"Q. What did you do?
"A. I was a man that worked in the field.
"Q. What have you done since?
"A. I work along with the others all the time.
"Q. Have you any position in the society other "than that of a member?
"A. Not since I belonged to it.
"(Question repeated.)

"A. I am a workman in the fields and a common "person.

"Q. Are you a member of the Board of Adminis- "tration?

"A. Yes, sir.

"Q. When were you elected?

"A. I cant remember; ever since they went away.

"Q. You mean by that the members who left the "society?

"A. Yes; since then I have been elected.

"Q. Were you present at the election?

"A. I was not just present when I was elected; I "was notified and then I came; when I was notified I "came.

"Q. Have you attended all or any of the Board "meetings since?

"A. Since I belonged to it I have attended them.

"Q. What are the duties of the Board of Elders?

"A. *To be obedient.*

"Q. What are your duties as a member of that "Board?

"A. *Also obedience.*

"Q. What do you do, as a member of the Board "of Elders, from day to day?

"A. I do my work as I always did, and all the "work I can do.

"Q. What work do you do?

"A. *With my hands and feet, a shovel and with "a fork.*

"Q. Who owns the land down here. Who owns "the town?

"A. It is the property of the community, and all "belongs together.

"Q. Has it been sold since you became a member "of the Board of Elders?

"A. I don't know of anything being sold, but "something that has been turned over, or transferred.

"Q. Do you mean a mortgage?

"A. *I am not so highly studied as to know what "a mortgage is.*

"Q. What do you mean by transferred? Do you "mean a transfer of the property to raise money?

"A. *I don't know what was going on here.*

"Q. What did you mean by a transfer?

"A. Mr. Duss explained it to me, so I understood "at that time.

"Q. What did you understand at that time?

"A. He said that they had taken in two men to "make that transfer, and he should just tell him what "he had said—and what they wouldn't know rightly he "should just tell him.

"Q. What do you mean by 'him'—Mr. Duss?

"A. Mr. Duss.

"Q. Was there anybody with Mr. Duss?

"A. I think there were two attorneys or lawyers "with him.

"Q. Who were they?

"Q. Who were the attorneys with Mr. Duss?

"A. I don't know.

"Q. At what date was that, can you recall?

"A. I don't know it any more.

"Q. How long ago?

"A. I think it was about a year ago.

"*Cross Examination by Mr. Watson:*

"Q. You attended the meetings of the Board of "Elders?"

"A. At that time they were all together.

"Q. Since you were elected a member of the "Board of Elders, have you attended their different "meetings?

"A. Yes; as much as I know.

"Q. How often do they meet—have they met "since?

"A. Each week on Monday evening they come "together.

"Q. And when they come together, what do "they do?

"A. Mr. Duss then bring up what goes on inside, "from the outside; we don't know anything.

"Q. Does the Board of Elders discuss or talk "about the different matters inside of the society?

"A. Yes, sir."

Let us recall to your attention, these provisions of the Constitution of 1847:

> "Article 2nd. We hereby ordain and establish a "Board of Elders, *which shall consist of nine members* "of the Harmony Society and their successors, to be "chosen as hereinafter provided: * * shall "be the first Board."
>
> "Article 3rd. The Board of Elders shall have "and exercise the following powers, to wit:"

Here follow control of internal affairs, appointment and removal of Superintendents, to make regulations and give orders.

> "*and generally to take care that the members perform* "*the duties assigned to them.*"

To determine disputes, admit new members; to remove Elders and Trustees, to fill all vacancies.

It is also provided that the concurrence of six members of the Board should be deemed the act of the Board, and a legal exercise of their powers.

A governing body on the one part, and people to be governed on the other part, are radically necessary under these articles to constitute the Harmony Society.

Yet no member remains to be governed; the entire membership is absorbed into the eldership. All of the Elders are women, except Duss and Gilman—and Gilman is an imbecile.

Is then, this *shell*, this shadow—this ghost to be accepted as the solid substance of the Harmony Society, as contemplated and demanded by the Constitution? Break this shell and there will be discovered, Duss alone, posing as the concentrated essence of the principles and purposes of the Society.

The Harmony Society presents itself to-day as a name —*vox et preterea nihil.*

CELIBACY.

There is no pretence of celibacy. Duss and his wife live together at the Great House.

Seiber, a junior Trustee lived there as a married man, (919): Reithmuller lived there as a married man. Duss claims that Rapp was married; yet it is true that Rapp's wife never lived at Economy. Judge Grier finds as a fact that Celibacy is a cardinal principle.

Christian Fellowship.

There is absolutely no fellowship of any kind. They fought like cats and dogs. Feucht was hounded; charges of adultery and drunkenness were freely made; Duss himself was charged with adultery and permitted the woman in the case to live in his house afterward. Every effort of Duss was directed to *break up fellowship* and get people *out* of the Society, instead of preserving good and Christian fellowship within. The testimony relating to the purchase of the interests of seventeen members hereafter referred to, effectually dispel any illusion which may exist as to the maintenance of Christian fellowship.

No Power of Formal Dissolution.

The most careful scruntiny of the articles, constitutions or agreements of the Harmony Society, will fail to

disclose any power in the membership, or in the Trustees as Trustee, or as officers, or in the Board of Elders, to voluntarily, formally dissolve the Harmony Society. The members are mere recipients during life, of certain provisions for their support and maintenance; they have no voting power, no right to demand an accounting; no voice in the dispositions of the income, or control over the same in any manner, nor in the selection of Elders or Trustees. As compared with the perpetual life of the Society as contemplated, the members are transients only; the death of a member has no effect upon the Society in any manner. They, then, have no power to dissolve the Society of their own motion.

The Trustees so far as they hold the property in trust, have no power given them to terminate the life of the Society.

Neither are the Board of Elders or the Board of Trustees, as managers, superintendents, or general agents, vested with any power of dissolution. Their powers are expressly restricted to the preservation, management and control of a *living* Society; they *maintain*, they have no granted power or right to *destroy*.

The position of the Master that a dissolution mus be by consent of *all* the members, or by an abandoment of principles by *all* the members, is not sound, because it concedes a power not granted to them; and because it concedes a title to the trust property in them, in violation of the trust created for the society.

The trusts are expressly limited to "the benefit and use" of the *society*, and not of its members.

Dissolution of the society is, therefore, something

which may be *encountered*. The state of facts which have terminated the life of the society may have been the result of wrongful acts of the Patriarchy, or even of the members; a perversion of the property, the impairment of the joint and indivisible stock, the willful permission of immoral conduct, surrender of the prescribed form of government, absolute inability to accomplish the purposes and principles for which the society was founded, and of many other conditions of affairs.

When the *facts* which have caused this dissolution, do occur, there remain then only liquidation and distribution of the property. But neither the Trustees nor the Board of Elders are given any power of liquidation or distribution. If they do so act, it is not because they are acting in the pursuance of the duties of their office as prescribed by the articles, but they do so as *Trustees in their own wrong*. Their sole duty, then, is to seek judicial authority, especially because the rights of *all* interested in the joint and indivisible stock *vested* at the moment of dissolution.

Our position we respectfully submit, is unassailable, if it be conceded, as it has been by the court below, that the grants in trust do not create a joint tenancy with right of survivorship in the members, as members. Because when the society dies, it no longer can support the trusts, and the property must revert by way of resulting trust to those who are equally interested in the "joint and indivisible stock," which is the corpus of the trust, those who are living, and the heirs and legal representatives of those who are dead. And they not *as* members, but having been and being members, they were the donors of the property to the trust.

Not merely is the position of the Master unwarranted

by the articles of the society, but it might result in John S. Duss, as sole survivor, wandering on the face of the earth, in two capacities, one as an unincorporated association—the sole beneficiary of a trust, of which he is the sole Trustee; and the other as an ordinary individual citizen. As a society, *he* does not die; his trust property cannot be taken to pay his individual debts. According to the Master, the law would be quite unable to mix Duss as a *society*, with Duss as an *individual*, because, he reasons, the society is legal, the trusts created violate no law, and nobody can say that the society is dissolved, unless all the members *consent*. And Duss may not consent!

Is it possible that the Master can be sustained in his other position, that there is no dissolution for abandonment of principles unless *all* have abandoned these principles? If so, the Board of Elders and the Trustees may convert the town into a free love society, and permit conduct violative of all decency and sobriety, diametrically opposed to every principle and purpose recognized by the articles, and still survive as a society, if all have not participated in the abandonment, no matter how small the minority may be.

The society is a "shadow, not a substantial thing!" Utterly bereft of virility, with no membership; absolutely incapable of performing any of the obligations of a Patriarchal communistic society, is it to be said that the mere garment which garbs the skeleton is the society of the constitation, the beneficiary of the trust, because of its own motion the skeleton has not discarded its robes?

Having shown that the articles constituting the

constitutions of the Harmony Society do not vest in the members as members, or the board of trustees, or in the board of elders, or in the combination of all, the power voluntarily to formally dissolve the association, can there by any question of the power of jurisdiction of a court of equity to ascertain whether acts have been committed or whether acts have been permitted which in point of fact are contrary to the purposes and principles of the society and which necessarily, therefore, create a condition of dissolution.

It is unnecessary for us to quote authorities to establish the jurisdiction of this Court over an unincorporated association. It is conceded by the Master and is conceded by the Court below; the power of course is as extensive as in cases of partnership.

The general principal as laid down by Bacon on Beneficial Association and Life Insurance, in sections 57, 38a and 39, that a court will determine that when the purposes of a voluntary association fail, or cannot be carried out in accordance with its articles of association or constitutions; or whenever the objects of a society are impracticable, or its organization is in the nature of a fraud, the association will be declared dissolved; and further that the question of dissolution is a matter of fact for the determination of the court, as are also the questions of what are the purposes and objects of the society.

Therefore, the questions before this court for decision are whether or not the principles and purposes of the society have been abandoned, as laid down in its articles of association; or whether or not the society has become disabled by acts done or permitted to be done from conserving

those principles herein before set forth and fully argued in this brief; and if it is so decided, then there remains the duty of distribution of its assets among those who are entitled.

WHY THE HARMONY SOCIETY IS DISSOLVED.

The conduct and management of the society has entirely departed from the scope of power, and the purposes prescribed by the articles of 1847.

The then Trustees from 1859 began to form partnerships with outside industrial and banking companies. Instead of continuing a communistic society, it became a capitalistic association; instead of seeking investments for its surplus funds in trust investments, the Trustees became partners in file works, saw works, glass works, a banking company, brick works, saw mills and like matters.

Who, then, *were* the partners in these enterprises? Were they all the members? Certainly not. Were the Trustees partners? If so, why did they use the trust funds in their hands as their capital? It was not the *society* as a society which was the partner, for it had no legal entity which would permit it to form a partnership with others. It seems absolutely inconsistent with the requirements of a communistic society—the very aim of which was to live from within by the labor of its own members, that the Harmony Society should join with outsiders in partnership enterprises, and be bound to obligations created by those outoutsiders, as well as to the outsiders themselves.

Nothing of these enterprises were known to the society. No minute book was ever kept. No accounting was ever made. No knowledge of the disastrous results of them was had until after the advent of John S. Duss, as Trustee, and then only as late as December 1, 1891, as he testifies.

The Master gives a list of these enterprises on pages 231, &c. The total losses amounted $1,500,000.

There is no pretence that these investments were within the *scope* of the power of the Trustees. The nearest approach to an excuse is the allegation that the Society from at least 1830, had been engaged in similar enterprises The facts do not support the Master. It is true as he recites (227) that in addition to farming the Society had Economy, silk factory, cotton factory, a woolen factory, a a distillery, saw mill, flour mill, vineyards, planing mills, carried on shoemaking, tailoring, weaving, tanning, coopering etc., etc. But all these were run by the labor of the members, and the products were such as were used and needed for the use of the members, and the surplus only was sold No wages were paid for labor; it was a self-supporting community. All this was clearly within the purposes of the Society. There was no partnership in them with outsiders How widely different from the outside partnerships we are now considering. The Society then became perverted into a mere trading association, and its aggregation of capital and its use in these outside operations, render it doubly offensive to the policy of the law.

Not a single outside partnership was entered into before 1859.

We respectively direct the attention of the Court to articles 3rd, 4th, 5th, and 6th, of the agreement of 1847

[pages 62, 63, 64 and 65, Vol. 1] for the full text of the powers confided to the Board of Elders and to the Board of Trustees. It is manifest therefrom that neither had any authority or justification to engage either themselves as Trustees for the Society or the members in outside partnerships.

ACTS OF LIQUIDATION.

According to John S. Duss he began to get an understanding of the financial straits of the Society about the 1st of December 1891. He was then the Junior Trustee. Father Hemici was about 87 years of age, very feeble in health, and he died on the 25th of Dec. 1892. Thereupon Duss became Senior Trustee. He had succeeded not merely in the management, but he became morethroughly, the technical trustee of the properties of the Trust. His powers, rights and duties were defined by these very articles of 1847, to which we again refer the Court.

What, then was his duty, when he was confronted with this frightful loss, which apparently demanded immediate payment, and left the Society in an insolvent condition?

His duty as Trustee plainly was to disavow these unauthorized and unlawful investments, and to refuse recognition of any liablity of the Society therefor. As a Trustee, he was bound to *protect* his trusts; he was not permitted to swerve from that duty by any personal sentiment whatever.

He did not disavow and repudiate them, but on the contrary recognized them and started upon the financial procedures to pay the liabilities.

In so doing, he depleted the capital of his trust — the "Joint and indivisible Stock", and in so doing, he acted as a liquidator, and not as a Trustee. He put the Society *into liquidation*: Whenever an Association, or a Corporation is unable to meet its indebtedness out of its income, and has recourse to its capital, it is insolvent at least *pro tanto*, and the act of conversion of capital into debt paying is Liquidation.

The condition of affairs demanded an official liquidator: 1st to ascertain the validity of the alleged indebtedness, 2nd to make provision for payment, 3rd to dispose of the surplus.

What greater right had Duss as Trustee to honor these liabilities, than the prior Trustees had to create them? To what line or sentence in the Articles of 1847, or in any other can counsel point which authorized Duss to deplete the trust funds, or to act as liquidator, or to recognize unlawful acts of his predecessors?

This disregard of his duties as Trustee, this usurpation of the duties of a liquidator, had put Duss into the position of disarming himself as a Trustee to *defend* his trusts, by his unauthorized acts of affirmation as a liquidator. He cannot sue himself.

Considering then the rights of the donors of the Trust funds, there remains no legal status for this Society, but that of dissolution.

The point we make is that Duss violated his trust in recognizing these losses as debts of the Society; that he betrayed his trust in taking trust funds to pay them; that in so doing he acted as liquidator, and the Society was then in liquidation.

The learned counsel for the defendants in the course of the trial flung into the case scores of pages of accounts to show the *manner* of the liquidation, and the financial success of Duss as a liquidator.

The Master devotes many pages of his report to a reproduction of these accounts. This line of evidence simply befogs the issue. It is immaterial to this issue whether Duss performed his duties as liquidator well or ill; or that he raised this money in one way or in another way, or that he dealt with such and such securities. Well or ill, he as trustee had no right to do it at all; as a trustee he had not the slightest right to recognize these liabilities as just debts of the Society.

We pause not now to consider any of the questionable proceedures of Duss, Hice and Reeves in conducting the bank as a live, going concern, with its doors wide open, inviting fresh deposits from day to day; of the false reports of the condition of the bank sworn to by the cashier, Reeves, and filed with the State; the monthly statements treating overdrafts and bad debts of many years standing as good credits against debts due depositors—all of which appears in the testimony of Reeves and Morrison in volume 2½; but pass to the proposition:

That the abstraction of the Trust funds by the Trustee Duss for the payment of these losses, depleted the joint and indivisible stock and infringed upon the Trust, and was a perversion of Trust funds for purposes other than those contemplated by the Trust, and therefore compels the general liquidation of the affairs of the society.

That the act of such payment was of itself an act of liquidation, consequent upon a dissolved condition of the Society.

PARTITIONS OF PROPERTY.

In pursuing his scheme to become vested by survivorship with all this vast property, Duss had to deal with two classes of members, viz:

Those whose ages and infirmities gave probable indication of speedy removal by death:

Those whose comparative youth and robustness of health affected materially his chances of surviving them:

In the former class are the present living persons:

Fredericka Muntz, aged 77 years.
Christina Roll, aged 77 years,
Barbara Boesch, aged 80 years,
Franz Gillman, aged 70 years,
Katrina Nagel, aged 58 years,
Caroline Molt, aged 54 years,
Mrs. Hermamrdurfer, aged 47 years.

Some of these may be dead already the record does not disclose it:

They can be maintained at very slight expense for the remainder of their lives.

Those composing the second class were to be got rid of by purchase. Accordingly a form of conveyance was prepared, which was used substantially in every case of purchase, except in the case of Hugo Miller, and negotiations were entered upon.

These deeds are printed in volume 2 of the Record p. 951 et seq. and are numbered "exhibit No. 1" to 12½ inclusive.

These forms all contain the following:

"And in full knowledge of the fact that said society "owns in addition to the property at Economy and "Leetsdale, several thousand acres of land in Michigan "and in Warren, Pa.; also certain tracts of land in Al- "legheny County, Pa.; also stocks and bonds in various "rail-roads, mining, manufacturing and bridge compan- "ies, to *nominal amount of several hundred thousand dol- "lars*; also various judgements, mortgages and unsold "lots in Beaver Falls and New Brighton, of the nomi- "nal value of several hundred thousand dollars, also "that while it may be possible that the said society may "have a large amount of property after payment of its "debts, I am entirely satisfied to *accept as my full "share and interest therein* said [five thousand] dollars, "*and I will never hereafter make any claim for any "sum whatever, nor for the delivery of any other prop- "erty of said society to me no matter what may be the "value of the property and assetts of said society after "payment of its debts.*" * * * * *

Not merely this, but the deeds of the Feuchts and the Stickels—some eight signers—["Exhibit 10," p. 961; "Exhibit 12½," p. 965] fix the probable surplus after payment of debts as follows: "And that said society may have property worth *several hundred thousand dollars, left after the payment of its debts and liabilities.*

The master continually speaks of these transactions as *withdrawal of members.* He is certainly not justified therein by any proper construction of the terms of these deeds.

The transactions weae virtually a setting aside of the shares of each of the selling members in the entire property of the Trusts. Thus: The assetts are specifically mentioned viz:

Economy Lands.
Leetsdate Lands.

Michigan Lands.
Warren Co. Lands.
Allegheny Co. Lands.
Stocks, Bonds, Several hundred thousand dollars.
Judgments, Mortgages.
Unsold Lots, several hundred thousand dollars.

The equities of these after paying debts, may be, it is said, a large amount; in two the equity is fixed at several hundred thousand dollars.

Having thus before them the property in which they are interested, the selling members fix each the value of his own interest, generally $5000, and then each agrees to accept the sum named:

"*As my full share and interest therein.*"

Is there not here a clear and definite admission that all the members held all the trust properties in common; an agreement that each of the selling members should withdraw the value of his interest from the trust properties, upon an agreed valuation of that interest?

The value of these interests being paid out of the trust funds, the remaining properties represent only the shares of those members who remain—the remaining portion of the trust fund equals the shares of the remaining members, who elect, however, not to sever their interests then, but to continue to hold their shares in common.

These transactions, then, constitute a *dissolution* of the society, and a liquidation of the interests of all the members, subject to the payment of debts. Assuming there were then twenty-six members, each had one-twenty-sixth; seventeen severally estimated the value of his 1-26th at

$5000, which was forthwith alloted to him. The remaining nine have the rest of the property for their several 1-26th, and choose for the present not to sever their interests, but to continue those nine interests in common.

This liquidation was not the *individual* act of Duss, apparently, but the official acts of the Board of Elders. The transactions appear on the minutes [vol. 2-pp 623-4-5 6-627]

There can be no qnestion that these transactions were and were intended to be a winding up of the society. They were to be followed by a sale of the Economy lands, and in the month of September. Duss and Reithmuller offered these lands for sale by public advertisement. [Duss vol 2 p 597].

Duss treated the society as dissolved, and used for his own purposes money—which otherwise would have been covered by the trust, for a variety of personal purposes. On Dec. 20, 1894, he insured his life for his wife for $15,759 [613]: On Dec. 15, 1894—one for $30,000 payable to his estate: On August 24, 1894 for $20,000 payable to his legal representatives.

He also gave positions, residences, propinquity at Economy to some twenty of his own and his wife's relatives; he and his family and some of his relatives and connections have since his succession to the senior trusteeship occupied as his home the Great House, an imposing building surrounded by extensive gardens, built and for many years used, as the expression of the superiority of the patriarch, over the ordinary working members.

He has organized a brass band, composes musical pieces, gives public concerts, and on one occasion paid $600

of the society money in his hand to Gilmore, the famous leader, for the privilege of having his own music performed by Gilmore's band, he to lead the band therein at the Pittsburgh Exposition.

We make no criticism of his musical abilities, nor of his tastes or habits—inconsistent as they may seem with the seriousness contemplated by the articles of 1827, but we do say, that all that saves Duss from a wrongful use of trust money is the belief he entertained that the society was dissolved, that those who wanted their shares had got them in money and that the residue was the absolute property of himself and the eight others, who had not yet severed their interests, and continued to hold their purparts in common.

The Harmony Society is not a party defendant to this Bill. Individuals are: not one of them under the articles of the society can have, and in point does not have *individual* revenues. The funds of the trust have been freely drawn on for eminent counsel and the expenses of litigation.—payments which can be morally justified only on the hypothesis that they have acquired this estate in partition and that the society is dissolved.

John S. Duss in his answer (par. 29, p. 104) says he came in December, 1891, in respect to the financial conditions of the society to know that its reputed great wealth was a myth, *and such wealth as it did possess in its then condition was more than equalled by its enormous load of indebtedness.*

He further says (p. 93) that in pursuance of the provisions of the articles of government, wherein it is provided

that the Trustees shall have and exercise the right to make donations to seceding members as they may deem prudent, "we did *donate* and pay Hugo Miller $5,000; Samuel Siber $1,000; Jacob Niclaus $5,000; Blasius Platz $5,000, and Morris J. Frederich $5,000."

He further says (pp. 95-96) that in the exercise of the rights of trustees to make *donations* he paid to the Feucht family $28,000 in cash, $15,150 in lumber and land. He similarly dealt with the Steckels, with Stievater, Mrs. Hoer and her son

This pretense of a "*donation*" is absurd. A donation is a free gift; the transactions now referred to were purchases for large resulting considerations.

An example of "donation" is Exhibits Nos. 8 and 9, (vol. 2 p. 960-961) Lena Fritch having on Feb. 14, 1890, resigned her membership, received $95" to pay my traveling expenses and such like." [Exhibit No. 8.] Father Henrici and Duss (Exhibit 9) also lent her $24 to go to Germany, which she is to return in case her circumstances make it possible.

At this time, October 23, 1890, Duss had no knowledge that the financial condition was bad—he fixes that date Dec. 1, 1891—and yet with all possible indicia of great wealth all around him, he fixes the *donation* at $95.

In 1893, when as he says and as he *swears* (104) he knew that the society's wealth was a *myth*—that its wealth was more than equalled by its debts—he buys the interests of these 17 persons at an aggregate of over $85,000, borrows the money on mortgage (414) and swears that the transactions were "donations."

Another instance of "donations were the gifts of $100 and $1,000 to Dr. Cyrus Teed, of Koorasha fame. (See Duss testimony p. 630, vol. 2.)

These selling members were admitted to membership and made their sales as follows, viz:

	Date of Admission.	Date of Sale.
Benj. Fecht Henry and 3 ladies of that family,	Feb. 13, 1890	May 16, 1893
Steckle, wife and Miss Geratch,	Feb. 13, 1890	March 29, 1893
Hugo Miller,	Feb. 13, 1890	March 8, 1892
Blasuis Platz,	Feb. 13, 1890	June 9, 1893
S. Stievater,	Feb. 13, 1890	May 17, 1893
E. Kellerman,	Feb. 13, 1890	Dead.
Conrad Hermansdoerfer,	Feb. 13, 1890	Dead.
Mrs. Hermansdoerfer.	Feb. 13, 1890	
G. Riethmueller,	———, 1892	Dead.
Samuel Siber,	———, 1892	July 6, 1893
Mrs. Siber,	———, 1892	June 29, 1893
Leonard Hoehr,	Mar. 14, 1893	June 23, 1893
Mrs. C. Hoehr,	———, 1892	June 23, 1893
Jacob Niclaus,	Jan. 20, 1890	May 5, 1893
M. Fredericks,	———, 1889	June 5, 1893

These alleged "*donations*" were made to sixteen persons admitted as late as February, 1890. One person admitted February 15, 1893, was "*donated*" out within three months.

Is Duss a credible witness? Then consider Duss' own testimony (930) about Nicklaus' retirement. Nicklaus thought if the old people had allowed matters to get so dilapidated, it was their own fault. "*That we could raise money on the property that could give us $5,000 apiece if*

we could not do anything else. I objected to this, still he insisted on leaving."

He also says that Nicklaus made this statement the evening he gave Nicklaus his check—or the evening before.

Nicklaus had been to see an attorney.

The Feuchts money was in settlement of their Beaver County suit (935).

Siber's wife had run off with the butcher; others were drunkards, more or less occasionally; others turbulent.

The reasons given by Duss for these "donations" are given vol. 2, p. 849–858; also pp. 927–932.

Duss also swears (411) the basis for these "*donations*" was the *demand of the donee.* Platz, Miller, Fredericks Nicklaus and Siber were all members ot the Board of Elders when they sold out (Duss 396).

They were succeeded by women (396.)

Can any one believe Duss when he swears these payments were "donations?" And if his testimony be discredited in this vital matter, what reliance can be placed on anything he has said.

The truth is that he was determined to get rid of every person of any vigor of body or mind. He made alarming statements of threatened insolvency. He closed the deals at the best figures he could get. And it was with the intention to accomplish what he did accomplish—to set apart to those he wanted out, their several shares in money of the wealth of the society; the residue he held undivided to await the aid and co-operation of death.

If these were in fact "donations," each would have been dealt with as the case arose. But Duss prepared himself in

advance for all. He swears, (vol. 2, p. 426) speaking of these deeds:

"Q. They were all drawn then from a general "form?

"A. Yes; we changed it a trifle, as our circum- "stances were changed."

The earliest use of this *general form* was on the Stickel settlement, March 29, 1893.

Why a *general* form, unless he had anticipated a *general* need for them? And how he could anticipate a *general* need for "donations," unless he had prearranged for their use? There was nothing in past usage of donations to warrant a general use, for in many years there had been but one donation to a retiring member, and that Lena Fritch.

XII

The Union Company.

Not only as we have clearly shown has the society, or Duss and the remaining members, abandoned every principle, law and regulation, which constituted the reason of the formation and existence of the society, and for the maintenance of which the financial system was derived and established, but they have turned over the society and its affairs to a corporation of the second class under the corporation laws of Pennsylvania, authorized to purchase and sell land.

The duties and the trusts imposed upon and accepted by the Board of Trustees and the Board of Elders, and defined by the articles of 1847, and a reference to them in this place will be appropriate.

In the preamble, it is narrated, that George Rapp had died (61) thus depriving the members of his christian fellowship and religious ministry, and his superintendence in their temporal affairs, and that therefore, it has become necessary to the good order and well being of the association that some plan should be agreed upon to regulate its future affairs, promote the general welfare and *preserve and maintain it upon its original basis.*

And therefore, the two Boards were constituted. The articles of 1827 (containing the exposition of principles) and the supplemental articles of 1836 are solemnly recognized, re-established and continued.

The machinery of the two Boards was devised solely to take George Rapp's place, for the purpose of preserving and maintaining the society upon its original basis, and the principles and purposes of the society as shown in the two agreements referred to, and the laws and regulations which Rapp by those articles had authority to enact and enforce.

The duties of the two Boards were of a *personal* nature, and could not be delegated.

Thus the Board of Elders had power to remove and appoint superintendents; to take care that members performed the duties assigned to them; to determine all disputes and misunderstandings; to advise; to reprove; to admit new members; to expel, to regulate, maintain and improve the morals of the society; to instruct; to appoint spiritual leaders; to remove members from the Board; vacate seats; remove

Trustees; to fill all vacancies in either Board; to choose successors.

The Board of Trustees were to deal, purchase, sue, contract, bargain, and generally to transact all external business.

And all the property is to be deemed common property of the society.

The Union Company was incorporated under the provisions of the XVI section of the Corporation Laws of Pennsylvania, approved the 29th of April, 1874 (Purdon 406) which provides for the incorporation of

"XVI. Associations for the purchase and sale of Real Estate, or for holding, leasing and selling real estate * *"

The capital of such companies is limited to $600,000. (Sec. 35); their Board of Directors and officers are elected by stockholders, and are accountable to the state, for taxes &c.; its stockholders are liable in certain contingencies for certain classes of debts; it may be dissolved by process of Court, and its affairs wound up by judicial decree. Its stock is always subordinated to its debts or losses in the prosecution of its business. The corporation has neither a soul of its own to save, nor has it corporate power to care for the souls of others. It has none of the powers confided by the articles of 1847 to the Board of Elders and the Board of Trustees. It is not within its power to feed, lodge, maintain and support, nor care for the religious welfare of the members of the Harmony Society.

The capital stock of this Company is $400,000. On April 12th, 1894, the trustees, Duss and Reithmuller conveyed to the Union Company all the lands of the society at Economy, at Beaver Falls, in Allegheny County; in short, all

its real estate everywhere, except land in Ohio, and a few lots at Beaver Falls valued at about $4,000 (Master 222; Duss p.)

This conveyance was made *subject* to *the assumption and payment of the two mortgage liens, one for $400,000 and one for $100,000*, previously placed on the property by Duss. All of the capital stock was given as consideration to the Trustees, viz: $400,000,

This company therefore purchased only an *equity of redemption, and in payment exhausted itself of every dollar of its authorized capital. It had not a share left for running expenses*, to pay interest on the mortgages, even to pay taxes on its land, or taxes to the Commonwealth, and was liable for lien indebtedness to the extent of $500,000. It was insolvent at its birth.

"A shareholder in a corporation has no distinct or individual title to the *monies* of a corporation; the shares represent a right to participate in profits only."

Bidwell vs. Railway Co., 114 Pa. 541.

The Supreme Court of Pennsylvania says, that *an equity* of *redemption is not property* for which capital stock may be issued.

Van Horn vs. Corcoran, 127 Pa. 255.

Hazlelt vs. Kemp, 160 Pa. 85.

The Trustees have divested themselves of titles in fee by which they controlled the *corpus* by sale to a corporation, receiving in return shares which give them no distinct title to the monies of a corporation, but gives them only the right to participate in profits which such corporation may make, if profits be made.

At any rate by these conveyances, the Trustees have divested themselves of every foot of their real estate; the members have not a roof over their heads. As Duss says they are tenants at will of the Union Company.

This transaction is not merely a direct act of liquidation; it is in flat defiance and violation of the trusts imposed upon these Trustees.

The articles ("Exhibit H" page 112) confesses the liquidation and assigns the insolvency of the society as its cause, as follows:

1st. This suit was threatened, to recover large sums of money alleged to be due to heirs of deceased members, which the paper declares they believe to be unfounded.

Of course, this is a confession of a fraudulent conveyance intended to defeat any recovery by such heirs, if they should be held entitled in such suit.

2nd. It had become necessary for the society to obtain money to pay its debts, either by borrowing and giving security, or by selling the lands of the society and thereby get cash for the payment of said indebtedness.

This concedes debts beyond the *income* of the society; the necessity for depleting its "joint and indivisible stock", and it also admits that the transaction was to be a transaction of *sale.*

3rd. That the lands can be better managed and made more available for collateral purposes; more satisfactory titles can be given if first conveyed to an incorporated company; and *also avoid inconvenience and trouble that may arise from time to time by change of trustees.*

4th. Therefore authority given to "forthwith *sell,*

transfer and convey to the *Union Company*, all its lands in Beaver and Allegheny Counties."

This sale comprises all its Pennsylvania lands.

Duss and Brooks assign other reasons in their testimony, viz:—to avoid an *escheat*—Brooks says as to the property of the society "*out of sight out of mind*", and therefore the transaction was a good one.

They pretend also that this corporation is a substitute for the Harmony Society; in short that the Harmony Society is now the Union Company. Whether so intended or not the sale of the Union Company tends to hinder, delay and defraud any creditor of the Harmony Society who may procure judgment against it.

Not an industry is carried on in Economy by the society since this sale, no matter what the master says. Every house, mill, shop, field, oil well and gas well is owned by the Union Company; and all are occupied, when occupied, and operated by tenants, be they at will or otherwise, and by lessees of the Union Company.

John S. Duss, as president of the Union Company, is in possession of the lands and tenements of the Company, conveyed to it by John S. Duss, trustee, in flat violation of his trust, and in liquidation of his debts and for other fraudulent purposes. As such president he doubtless receives a salary for services, which as trustee he could not lawfully exact. He has by this act absolutely blotted out the Board of Eiders, and deprived them of their right to the exclusive management of internal affairs of the society, and he has blotted out his own trusteeship, and he as president of a corporation for profit and a Board of Directors com-

posed almost exclusively of non-members of the society, have exclusive ownership and control of all the trust property.

Franz Gilman is the only male member of the society, besides Duss, and Gilman is an imbecile, so that the directory is necessarily composed of non-members, except as to Duss.

The Board of Trustees have no power of liquidation conferred upon them by the articles of 1847. The power of liquidation—the conversion of trust property for paying debts is never implied as existing in a trustee, or a Board of Directors. When a company can no longer pay its debts as they mature, the company is insolvent; the directors cease to be directors, and hold the assets in a new relation, until the process of law is put into operation. The Board of Trustees are entrusted to manage and preserve the corpus of the property of the company, to sell, to buy, but not to deplete the property in their character of trustees. If their operations prove disastrous, their powers as trustees cease and they bear a new relation—and that only to put into operation an official process of liquidation.

It will be contended that in as much as the articles of 1847 give power to the Trustees to sell all or any part of the property of the company, they had the power to sell all the property to the Union Company.

In this there is error. All the property granted by those articles were for a "going" concern, and for the purpose of keeping it going; to carry into successful results the principles of the society, and to maintain in existence and in the exercise of their functions the Board of Elders and the Board of Trustees. It is an astonishing proposition that the articles which create a system and prescribes pow-

ers to keep that system in successful operation may be construed to justify a *destruction* of that system, and a complete demolition of its two Boards, and of the duties imposed upon them.

Besides, a power of sale, no matter how large, will never be construed to include the sale of all the property necessary for existence, and a conversion into an entirely hostile and distinct enterprise.

The law bearing upon this question is the same law applicable to Boards of Directors of corporations.

Morriwetz on Private Corporations (Sec. 239) says:

> "A Board of Directors have no implied authority "to make a material and permanent alteration of the "*business or constitution* of a corporation, even though "the alteration be within the Company's chartered "powers."

And (Sec. 240) that the Directors of a corporation have no implied *authority to wind up the company*, or to sell any property which is necessary to carry on its business.

The Trustees have not the power or authority to *change the business, the mode of government, or the machinery already adopted* to maintain and carry out the principles of the society; and in so doing they have destroyed the society, and terminated its existence.

It is also contended that every living member of the society signed "Exhibit H," dated April 11th, 1894, authorizing this sale to the Union Company, and that in so doing they made lawful the transaction of sale to the Union Company, and *that being the sole surviving members they had full power so to do.*

This contention necessarily assumes:

1st. That the constitutions of the society provided for a joint tenancy with a right of survivorship; or

2nd. That if there was no survivorship provided by the constitutions, the society itself remaining a society in April 11th, 1894, had a right to so deplete the property, or change its character, and destroy its system, and to substitute foreign and alien modes, motives and systems, so that when the society really died, the changed conditions of property would be substituted in distribution among all those entitled, next of kin of members dying in the society since 1836, included.

As to the first assumption that the surviving members of 1894 could do what they pleased as sole owners by survivorship, we can add nothing to what we have heretofore presented, viz: That none of the articles contemplated the *death of the society* in any form, or made any provision for tontine;—and that neither can be presumed in the absence of express provision; and that, therefore, there is no survivorship or tontine. If I am correct in this the first assumption falls.

As to the second assumption, that independently of right by survivorship, the society still existed *as a society*, and that during its existence, it has power to fundamentally change the purposes and systems, and to convert the property of a society founded for *distinctly expressed purposes into stockholders* of a real estate corporation, the best answer I can make is to state it.

In this view, the membership are as much bound to maintain the principles, preserve the property, and be governed by the systems of 1847 as the trustees are. They

cannot validly authorize the trustees to violate their trust; for all the rights of the living members are comprised in *enjoyment and use*, and in the preservation of the corpus for distribution among those the law directs, when the time for distribution comes.

The members under the articles of 1847 had no right to *change* anything. Nothing was reserved to them. They had no power to vote, no power to change the Boards, to enlarge, to reduce their powers, to authorize them to do this, or forbid them to do that other. The Board of Elders was *self perpetuating*, and the Board of Trustees was dependent for life on the Board of Elders. The members were only poor devils, mere serfs, to work cheerfully with their hands as the Boards directed. And in signing the articles of 1847, they forever obliterated themselves from any semblance of right or power to change Trustees or Elders, to authorize the Trustees to do or not to do; to enlarge powers; to reduce powers; to ratify. And the agreement of 1894 is to be read as though it was the resolution of the Board of Elders or Trustees, and is affected with the same vice—a vital lack of power to modify, change or alter, the articles of 1847, or to enlarge, reduce or destroy the trusts therein provided for.

The appellees must therefore absolutely depend on the articles of 1847 for the power of the Trustees to sell these lands to the Union Company. When we look at these articles or any preceding articles, to find what rights or powers the members as such have reserved to themselves, we will find nothing. They are emasculated; they have deprived themselves of every vestige of power or authority or right except to *labor and labor cheerfully and to obey cheerfully, and to*

waive wages, and accept only board. lodging and clothing, care in sickness, &c.

Such powers cannot exist in the members as such, without destroying the articles, and establishing some other system which perhaps ought to be, but is not.

In short the system is an abhorrent one—a system of slavery intolerable in a free land, and should be mercilessly condemned.

But there these articles are, and it is impossible to import into them any authority in the Members as such, to give different direction to the powers of the Trustees, from that provided by the articles of 1847, unless the appellees can succeed in convincing the Court, that the constitutions provide for a joint tenancy with right of survivorship, or tontineism in the members.

If it be seriously contended that death of a member in the Society leaves no descendible interest to his heirs or next of kin in the property of the Society, the interest of each member therein is reduced to a life tenure only. When one dies he simply steps out, and the remaining members continue such life interests until they die.

And then, that being the case, a life tenant, or one whose interest in the property is but for life, cannot by *his act* interfere with the disposition of the fee held by Trustees for the Society as a whole. And hence all the members signing the articles of 1894, having only *life enjoyment* cannot by a *united act* control the uses, dispositions and purposes covered by the Trusts, so as to direct them from the conditions imposed upon them; especially to the prejudice of those who have legal rights in distribution protected by the agreements of 1836, and the trusts of 1847.

The Master contends that the transaction of sale to the Union Company, was not entered into with intent to liquidate or to dissolve the Society thereby, and as the members and Trustee did not *form an* intention to dissolve thereby, the Society is not dissolved, notwithstanding that sale.

The question of intention has nothing to do with the condition; an actual dissolution is a necessary consequence of acts done, and cannot be defeated because the actor did not intend that consequence.

A man is presumed to intend the natural consequences of his act; those natural consequences prove the intent.

The Master certainly can find nothing in "Exhibit H" —(the articles of 1894)—to support his conclusion that there was no intent to dissolve. The fact that the Trustees resorted to the *members* for an authority, shows an intent to resort to the original elements consistent only with a radical change destructive of the Society. Then the confession of insolvency contained therein also. And these articles of the 11th of April, 1894, are immediately followed by a deed dated April 12th, 1894, to the Union Company—the day after.

The Company had been already organized; the deeds had already been prepared, and the very next day the corporation stepped in, and the Board of Elders and the Board of Trustees stepped down and out.

The Union Company is the practical liquidator of the affairs Harmony Society to-day.

We give a summary of "Exhibit H" (vol. 1 p. 112), dated April 11, 1894:

It recites a large indebtedness, payment of part of which may be called at any day; that this suit is threatened; and therefore it becomes necessary in order to obtain money to pay debts, "either to borrow money and give security," or sell the lands of the Society, *and thereby obtain cash for the payment of said indebtedness;* that the lands can be better managed and made more available as collateral and more satisfactory titles given, if first conveyed to an incorporated company, to *be thereafter managed, sold, disposed of, by and in the name of such company.*

> "And also avoiding thereby inconvenience and "trouble that may arise from time to time by change "of Trustees by death or otherwise."

Therefore sale authorized to the Union Company of

> "All lands now owned and held by said Trustees "for the benefit of the said Society to the end that all "said lands, tenements and hereditaments may be "owned, held and managed by said incorporated com- "pany, and be sold and otherwise disposed of from "time to time in pursuance of proper corporate action "as *may be determined by the directors and officers of* "*said incorporated company.*"

The capital stock of said incorporated company, however, to be owned and held by the Trustees in accordance with the articles of association to the amount of $397,500 out of a total capital of $400,000.

What else can this be but liquidation following insolvency and death.

The existence of a large debt; the necessity of raising money; the sale "to obtain cash for the payment of the same"; and finally turn the entire trust estate over to a corporation. Not for cash to pay the indebtedness, but to be

held, sold and managed by the Directors and officers "of the incorporated company."

The trustees get certificates of stock, which may or may not be dividend paying. The profits, the money, the corpus belong to the incorporated company, not to the *Trustees*. The latter have deposed themselves, and have delegated their trust to the officers and Directors of the incorporated company. every one of whom, except Duss, is a stranger to the Society.

The trust fund is burdened with state dues and taxes; the corporation is subject to State control, and over and above all the corporation has no corporate right to act as manager or Trustee for any other persons.

In the most optimistic way this transaction can be considered, how are the members of the society to be housed, fed, clothed, and nourished in sickness and age, out of dividends on stock not earned nor declared.

Duss Trustee, is Duss President of the corporation; he at least is strictly in it.

The property conveyed to the Union company is worth at the very lowest figure $1,000 per acre. There are at least 3,000 acres. The consideration given to the Trustees is $395,000. Who is to control the enormous profit of the corporation—who but Duss? Where comes in the control of the Board of Elders? And who are the Elders, except one imbecile man, and an ignorant, incompetent non-English speaking old German peasant women.

The preamble reciting the indebtedness and the necessity for raising cash is a mere blind, a pretense, and is not founded on fact. This paper H was signed April 11, 1894.

The Master finds that $1,002,731.62—every dollar of the liability to the bank, had been paid off Jan. 1, 1894, four months before the date of this "Exhibit H." (M. R. 250). The Trustees got not one dollar or cent from the Union Company. On the contrary the Master finds that the Trustees actually loaned to the Union Company $119,740.43 (M. R. 251.)

And where would the Union Company get any money to pay the Trustees? All its capital was exhausted to the Trustee Duss—and therefore had no means left. The very money loaned by Duss, $119,000, was applied to paying the second mortgage and $50,000 on the first mortgage (M. R. 251.) These mortgages were assumed by the Union Company as its own debt without a dollar in its treasury to meet them. Of the first mortgage $350,000 remains unpaid—a first lien, and the title to all the equity rests in the Union Company.

Mr. Brooks testifies that he advised the Union Company scheme, among other things to "remove the property "in a sense out of sight and out of mind so far as the question of *escheat* was concerned." (Vol. 2, p, 645.) How could there be a question of *escheat* unless the Society was dead?

He further says;

"It was organized on my recommendation for the "purpose of putting the property of the Society in "what I deemed to be a safer condition so far as the "title was concerned, and to facilitate the sales of prop-"erty from time to time when we shall get ready to be-"gin to sell."

The Master seems to hold that the Union Company is the Harmony Society. How can this be within the charter of the Union Company?

If he be right, then the Harmony Society cannot be living. The duties of the Board of Elders and the Trustees have vested in an extraneous corporate Board of Directors. That Board consists of five persons. The quorum of the Board of Elders is six. The discretion and power of dealing with the property of the Trust has passed from the Trustees of the Society to the Board of Directors. What contract has, or what contract can the Union Company assume to support and maintain the members, or to fulfill the obligations imposed upon the Board of Elders and Board of Trustees?

We submit with confidence these propositions:

That the transaction of sale to the Union Company was in violation of the Trusts, was an abandonment of the purposes of the Society, and an act of liquidation consequent upon an actual dissolution. The assent of members in paper "H" was an express acknowledgement of dissolution.

That if the Union Company be the Harmony Society in another name the form of government provided by the act of 1847 is destroyed; the Union Company in so acting is also acting *ultra vires*.

That if the Master be right in so regarding the status of the Union Company, and Mr. Brooks' statements of the purposes of the transactions be accepted, then the Trustees have made a voluntary assignment to the Union Company, and the Union Company is the voluntary assignee to convert the property of the Society by sales, to pay the mortgage debts, furnish money for payment of other debts, and to account to the Trustees for the surplus remaining. The

testimony shows that no rents are charged by the Union Company to the Trustees, the latter being as Duss terms it, tenants at will. And the Union Company gave the Trustees leases of all the Economy lands &c. from April 1894 to April 1895 without rent, the Trustees to pay the taxes (Vol. 2 p. 410.)

And the assignment is made to a Company with no power to so act. The transaction however is a recognition of the failure of the Trusts and of the Society, and is the declaration of an abandonment of the purposes and principles of the Association.

XIII.

The Reference and the Report.

The counsel for the parties in this cause to avoid the constant reference of disputed questions arising on objections to testimony to the Court, entered into a written agreement for the appointment of a Master.

In the report the Master gives but a part of that agreement; viz: that which relates to his powers, and omits the remainder, which is as follows, viz:

"The parties reserving the right to be heard be-
"fore this Court on exceptions to such findings and re-
"serving the right of each to take appeals from the
"decree, decision and judgment of this Court therein
"to the proper appellate Court, with the same force

"and effect as though this cause had been decided by "the Court below without the intervention of a Master.

"It is distinctly understood that in the conduct of "this cause the Master will be governed by the decision "of Judge Acheson on certificate of examiner, opinion "filed October 15th, 1894, reserving to both parties the "full right of exception and appeal from such decision."

Unfortunately the inability of the few plaintiffs, in a pecuniary way, has compelled their counsel to omit from the record a great amount of testimony, and thus to withdraw from the attention of this court many allegations of our bill which we believe amply sustained by the evidence.

We feel also that as respects those matters, and as respects those now before this Court, we have not been dealt with with that degree of kindness which is consistent with just expectations.

As respects certain charges against Duss' moral character, not introduced as showing his personal unfitness, but as showing the abandonment of principles of the Society, we are placed in the position of his wilful traducers. Yet the fact is the act was sworn to in the fullest detail; the witness was recalled for further cross-examination by the defence and then recanted his testimony in chief. The defendant took no action as for perjury against this witness for his statement in chief, but the plaintiff caused his indictment for perjury for his statement of recantation. We offered to show by the record that this witness plead guilty of perjury in his recantation statement and was sentenced to imprisonment in the penitentiary for his crime.

That offer appears in Vol. 2, p. 937. It was rejected by the Master.

The Master finds a clear bill of health for Duss. It seems to us that in a matter addressed to the Chancellor as to the credibility of witnesses, this offer should have been admitted, if for nothing more than to relieve plaintiffs and their counsel from an apparently gratuitous scandal,

It will be apparent on reading the report that everything on the defendant's side had the go, and nothing prevailed on the plaintiff 's side.

The principul witnesses for the defence are Duss, whose vast interest at least suggest bias, Hice, Reeve and Mr. Brooke. Judge Hice had been the chief attorney and adviser of the Trustees for fifty years, was a partner with the Trustees in all their ruinous investments, and President of the Economy Bank. Reeve had been similarly interested in their enterprises, and was the Cashier of the Bank. Both Hice and Reeve had every motive to induce Duss to pay off the debts of the Bank, and to relieve themselves of the odium otherwise attaching, and to relieve themselves from liability as shareholders.

Every motive to indicate bias is to be found in these witnesses.

As to Duss the testimony discloses as does his answers, that he persisted in swearing that the purchase money he paid for the interest of seventeen members in the property of the Society were "donations" within the meaning of the articles of 1847,—in the very teeth of his statements of the deals themselves, the "dickerings" for price, and the phraseoligy of the agreement of sale.

The testimony disclosed, also, that Duss knew the terribly rotten condition of the Economy Bank, and the causes

of the rottenness, in 1891, yet kept the bank open until some time in 1893, receiving deposits as a going concern.

Judge Hice swears that he, as President, kept the bank open in these circumstances, and admits his knowledge of the Act of 1889, and his violation of it.

Reeve, the Cashier, admits swearing to false statements of the bank's condition rendered to the State department; and the evidence discloses false monthly statements submitted to father Henrici. These statements treated overdrafts and notes for dead debts of years standing as live assets to the amount of $1,000,000, so that some, if not all, of the statements were made to show a surplus of profit.

Yet the Master gives unlimited credence to everything these witnesses have testified to. Our many witnesses receive scant treatment, and Benjamin Feucht is openly charged with bias. And yet Feucht made not one charge against the morals prevailing in Economy, as manifested in individuals, which is not practically admitted by Duss. He also charged the Elders with refusing to put accused individuals on trial; Duss admits they were not put on trial, and excuses himself for purchasing the interests of accused persons, because they were guilty of the very offense complained of.

The Answers are four in number. Mr. Duss joined with all the defendants, and also filed a separate Answer. The Answers of defendant members and that of Mr. Duss includes in them what it was beyond their power to know, and therefore in the judgment of complainant's counsel, the

Answer should stand for naught in those respects. Hardly one of the defendants had been in the Society ten years, and two or three of the older ones were either bed ridden or so feeble as not to understand what occurred in the Society in the past few years.

An examination of the Paragraphs of the General Answer will disclose that the allegations therein made were such as counsel thought ought to be made. The separate Answer of Mr. Duss is open to the same objection, he joining the society in 1890. He could have had no knowledge which would have enabled him to speak effectively by way of Answer. The Master has, however, seen proper to give great effect to the Answers open to this objection. As the Answers are not responsive to the bill they should not be regarded as effective denials.

It will also appear on inspection that the Bill waived an Answer under oath, and yet notwithstanding the defendants have verified their Answer. That the Master treated such Answers as responsive, appears throughout his entire report, and in very many instances he bases his findings of fact upon the averments set up in these Answers. The two principal witnesses who had testified at length for the defendants in support of their Answer, particularly upon what constituted the principles of the Society, and the manner in which its affairs are conducted, are Henry Hice and J. T. Brooks, the paid counsel of Mr. Duss in this very case. Mr. Hice is the person who practically conducted the bank, file works and cutlery works, which operation "crippled and ruined" the bank, according to Mr. Brooks; Vide, page 644, Vol. 2 of Record; while Mr. Brooks, according to his testimony, virtually acted as a co-

trustee, discharging most of the employes of the Society, negotiating with and paying off the members as they retired, selling and disposing of practically all of the investment securities of the Society, without consulting with the Board of Elders or the members; putting large mortgages in behalf of his clients on the Society's property without telling the Society's members what he was doing, and finally organizing the Union Company in order to "put the property out of sight;" all of which will more fully appear by an examination of Brooks' testimony, especial reference being made to pages 645, 647, 652, 691 to 695, 698 to 700. Consequently the testimony of Messrs. Hice and Brooks, the accredited attorneys of Mr. Duss, should have been regarded as unusual under the circumstances and open to scrutiny; yet the Master gives absolute credit to every statement made by these witnesses, whether the same had been contradicted by plaintiff's witnesses, or was unsupported, or negatived by the circumstantial or collateral evidence in this case.

The Complainant's paragraph 19 of the Bill, upon which the *thirty-eighth* assignment of error was based, alleges as part of the plan of Mr. Duss and his colleagues to wind up the society was his settlement with about all the active members of the society, and accepting from them what in law must be regarded a deed of liquidation or partition. When brought face to face with such a charge, Mr. Duss attempts to meet the same by a series of explanations, which the Master adopts in his findings of fact. If the Court upon the examination of the evidence bearing on this subject is of the opinion that Mr. Duss' testimony is false or what is equivalent thereto, trifling and insincere, then

such a conclusion is of vital importance to the present complainant's case; first, it establishes a plan that necessarily could have been but one step in the scheme to liquidate: second, shows the danger of relying on any of the unsupported statements of Mr. Duss throughout the case, upon the principle that he who is persistently false on one line of material evidence is likely to be false in all that effects him; third, that if the Master is manifestly deceived by such testimony, it should weaken the Court's confidence in his discernment and judgment in the whole case. Therefore, in considering this aspect of the case, it is important to weigh the motives of the principal defendant. If his plan was to reduce the society down to himself, his wife, or even one or two others, that he or they jointly with them might have the entire usufruct of accumulations covering nearly one hundred years, and to which he had contributed nothing, then the immensity of the stake he sought must be considered in weighing his testimony, and in considering the testimony of those he brought forward to aid him in affecting such results. A man who will betray a trust and seek to become the beneficiary thereby, must be put in a class whose testimony is worse than doubtful, if such betrayal is proven or reasonable ground exits for believing it to be so. Therefore that we may not be considered as judging the man harshly or, attempting to prove a case by invectives or unfair insinuations, we most respectfully ask the Court to read in its entirety the evidence bearing on this branch of the case, all of which is printed in the present Record and is separately indexed in this brief. It is admitted on all sides that Mr. Duss is a bright, shrewd young man. Until 1890

he had led a life with considerable ups and downs in the East and West that more than likely gave him an experience in worldly matters which must be of considerable assistance in playing his present role. Circumstantial evidence at times is the most convincing of all, especially if the trend is continuously and uniformly all one way and only attempted to be met by the direct testimony of interested parties; but when such circumstantial evidence is supported by direct testimony it has added strength.

In the first place an examination of the reasons given by the Master for each member retiring will indicate apparently that *each retiring member testified in this case*, (*Vide*, page 294 to 296, Master's Report). But three out of the seventeen were called, two of these for the Complainants, who testified contrary to the Master's Findings.

The Master says in his Report, page 295, "Jacob Nicklaus was the next who wanted to withdraw. His reason was that," &c.

Mr. Nicklaus was not a witness.

The Master again says: "Stievater also wanted to withdraw. He complained, &c."

Mr. Stievater was not a witness.

The Master says, "Blasius Platz complained that he could not get along," &c. He was not a witness.

The Master says (page 296:) Of Christina Hoerer, "her complaint was that her sister," &c. Mrs. Hoerer was not a witness.

Of Elizabeth Sieber, the Master says, "Mrs. Sieber insisted on leaving. She complained," &c. She was not a witness in this case.

This Court, therefore, reading these findings by the Master would necessarily assume that the Master made his findings from what these people had said on the stand as witnesses, whereas the truth of the matter is that these findings were based wholly on a part of Mr. Duss' testimony, wherein the latter attempts to excuse or justify his payments.

To accept the explanations of the very man charged with sinister purposes as the truth, and then state these findings in such a way as to give the appellate Court the idea that they are based upon the testimony of the retiring members themselves is apt to be confusing.

When an examination of Mr. Duss' testimony is made, we think it will plainly appear that the excuses and explanations are worse than frivolous. He says Frederichs left because he did not drink; that Stie vater left because he drank too much; that Seiber left because he was too good a man to stand the story circulated about his wife, while Mrs. Sieber left because these lies were circulated about her (in passing it may be said she confounded her traducers by eloping with the village blacksmith.)

Duss says Stickel left because the Board of Elders did not like his interfering in the Feucht litigation, while the same Board of Elders left at the same time for equally strange reasons.

Mrs. Hoerer left because she could not get along with her sister in the Society, and Platz left because he and Sieber could not agree, and Sieber left for the reasons already above stated. Miller left because his German was too high-toned for the rest of the members, and so on *ad libitum.*

The Master in one part of his opinion says that all these members except Sieber left on account of the Feucht bill, but Mr. Duss' reasons and the other evidence do not bear out such a remarkable finding. As stated before the Master fails to include in his Report the paper signed by these retiring members, or comment thereupon.

The fact is that the evidence of the defendants utterly fails to properly account for the retirement of Fredericks, Bertha Geratch, Mrs. Stickel, Christina Hoerer, Leonard Hoerer, Hugo Miller, Rebecca, Margaret and Tirza Feucht; Dr. Benjamin Feucht, the Society's physician; Jacob Nicklaus and Samuel Sieber, for against these persons there is nothing that affects their character or their standing in the Society; but they composed practically all of the intelligent and younger members of the association; as for Julius Stickel and Henry Feucht their activity in attempting to correct abuses in the Society is all that rendered them objectionable to Mr. Duss; while B. Platz and Mrs. Sieber should both have been expelled instead of getting some ten thousand dollars.

Therefore when the Master finds that Mr. Duss "earnestly insisted" on all these members remaining except Stickel and Feucht, we have the picture of Mr. Duss holding firmly onto them with one hand, and in the other offering a fortune to these simple Germans ranging from five to ten thousand dollars in case they should retire—his right hand not knowing what his left hand did—while to induce them to remain he sets forth in his quit claim deed that the Society "may possibly have several hundred thousand dollars" above its indebtedness—per capita assets not more than equalling what he offered them in ready cash.

But just as the above picture shows Mr. Duss' extremity in now attempting to explain away his scheme of liquidation—so is the one where he attempts to convince this Court as to the reasons why no new members have been admitted since the Fall of 1892. The Master says the Feucht Bill prevented others joining. Think of it. A Society reduced to less than ten, with only one competent man left, and yet nevertheless Mr. Duss, Mr. Hice or Mr. Brooks who seems so successful in getting people to retire, can get no one to join with free rent, free living, free clothing, no interdiction on marriage, and an interest in over three millons of assets; and if they wish to retire under such pleasant surroundings then "donations" ranging from three thousand to ten thousand dollars in land or money could be obtained, however slight their period of service in the Society: Were invitations issued for applicants a line would form from the City of Pittsburgh to the town of Economy seeking admission, and out of these ranks we submit one ought to be able to select a few capable energetic Germans who could relieve Mr. Duss from the great worry and burden of the entire management of the external and internal affairs of the Society which he so frequently refers to in the present case. Doubtless some of his twenty relatives or connections living in Economy would be quite willing to help this hard worked Trustee out of his fearful difficulties. The fact is patent, of course, that Mr. Duss has no intention of taking in a single person, and thereby making him the individual owner of possibly three hundred thousand dollars in case this Court sustains the lower Court, thereby permitting Mr. Duss to legally retire in the future the rest of the members now remaining.

We give an index of Evidence on Retirement of members: Stickel 533 to 536; 538 to 541; 565 to 568; Fredericks, 589 to 593; Duss, 849 to 858; 871 to 873; 900 to 904; 927 to 939; also 375 to 379; 381 to 387; 425 to 428; 620 to 629; Brooks 646 to 652; 669 to 671; 678 to 689; 691 to 700.

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Counsel for Appellants.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 231.

CHRISTIAN SCHWARTZ ET AL.,
Plaintiffs below and Appellants,

vs.

JOHN S. DUSS ET AL.,
Defendants below and Appellees.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

APPELLANTS' BRIEF OF ARGUMENT.

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SUPREME COURT OF THE UNITED STATES.

CHRISTIAN SCHWARTZ, *et al.*, *Appellants,*
vs.
JOHN S. DUSS, *et al.*, *Appellees.*
No. 231. October Term, 1901.

APPELLANT'S BRIEF OF ARGUMENT.

HISTORY OF THE CASE.

The present proceeding was instituted for the purpose of having the remaining assets of an alleged defunct society distributed among those entitled thereto, including the present plaintiffs, and at the same time prevent the consummation of a plan which aims to divert millions of dollars to those who are not entitled to the same.

The history of the Harmony Society is unique in the annals of sociology, while the several legal questions now to be passed upon are, for the most part, novel in our jurisprudence. The State Courts of Pennsylvania have reviewed one or two questions affecting the society at a date prior to the alteration of the main article of association, and *before* the legislature had passed laws providing different methods of incorporation, or had imposed restrictions limiting periods of accumulations, so that its construction of the earlier articles of association is wholly inconclusive; the Federal Courts, so far as they have touched upon the questions now at issue, have been in entire accord with the contentions of the complainants.

The society had its inception at the beginning of the last century; its membership gradually rising to upwards of six hundred, and as the new century begins the present tribunal is called upon to determine the disposition of assets, amounting to and probably in excess of five million of dollars, which it is alleged the prearranged survivors of the society, eight in number, have recently con-

verted into a form that, if legal, makes the "joint and indivisible" property as volatile as air and its ownership as mutable as negotiable paper.

The chronological history of the society is as follows:

In the year 1803, George Rapp and his son, John, and several of their friends, left the Kingdom of Wurtemburg, came to the United States, and located at a place called Harmony, in Butler County, Pennsylvania, where they were joined by a considerable number of other emigrants. They remained there until the year 1814, when they removed to Posey County, Indiana, where they remained until the year 1825, when becoming dissatisfied, they moved back to Pennsylvania, and located at Economy, in Beaver County, Pennsylvania, where they ever since have resided.

The Harmony Society was organized upon the principle of community of goods and land ownership. The members of the said society, who had brought with them from Wurtemberg money, combined their funds and held all their property in common, they living as members of a common household, and each member enjoying alike with every other the fruits of their common labor in equality and brotherhood. The occupation or business of said society was agriculture, except in so far as it was necessary to manufacture shoes, clothing and other necessaries for the community. The members of said society obeyed said George Rapp as their spiritual and temporal leader and ruler. The only laws or rules governing said society were made by him, the members thereof having no voice in their enactment.

About the year 1807 the community promulgated the doctrine of celibacy as being necessary for the success of a communistic society. Wives were separated from their husbands, and henceforth lived apart. From that date no marriage ceremony has ever been performed in the society, and celibacy was rigidly practiced until about the year 1892, when this rule was ignored.

The Harmony Society, as it in later years is designated,, was known as "George Rapp and his associates" from the year 1805,

when the first articles, so far as is known, were executed, until the year 1836.

Who George Rapp's associates were is undisclosed by any of the records of the society. It is almost a certainty, however, that he had no "associates," for from the beginning until his death in 1847, he was the absolute and exclusive ruler, patriarch and lawgiver; and had the absolute and exclusive control of all its wealth, and of its internal and external affairs.

The scheme of society conceived by George Rapp was an association with "community of goods, as adopted in the days of the Apostles," with the government of the Patriarchal age, as cardinal principles. New members were to be admitted by "adoption." All additions to the society have been by "adoption." All the power vested in and remained in the patriarch; all subjection and no power, voice or vote constituted the portion of "adopted" members.

Every member upon adoption executed conveyance of his real estate, and surrendered possession of his personal wealth to "George Rapp and his associates" until 1836, and afterwards to the Harmony Society, for the use and benefit of the community; and every "adopted" member entered into written articles of adoption.

Until the execution of the Articles of 1836, the "adopted" members, upon withdrawal from the community, were entitled to a return of the value of their lands, money, goods and chattels, severally contributed to the society, without interest, in three annual gales; the profits of their labor were, however, unrecoverable.

The Article of 1836 was written in English and German, and was executed by 391 members of the society, *revoking and annulling* the sixth article of the agreement of March 9th, 1827, which had provided for the refunding to withdrawing members, the value, without interest, of the property or money contributed by them to the society, converting all of the property, no matter how derived and all future acquisitions of all kinds "forever" a "*joint and indivisible stock*," and confirming and continuing the remainder of that agreement. A copy of this agreement is Exhibit "D," and is printed both in the Argument and in the Record.

Up until the date of the adoption of the Article of 1836, those who had contributed money or land to the society could, as already stated, withdraw and receive back from the society the cash value of such contributions. Such a system being deemed unfair and likely to create dissensions, it was agreed by all the members, and those who joined subsequently, that no member's contribution thereafter should be restored, but that all should stand upon an equality, whether they gave money, land or simply labor, and that all property rights should thereafter be "joint and indivisible." By this radical change all members were made *equal donors* of the trust property, and the Harmony Society the donee, holding the trust properties in perpetuity. In order to effectually carry out this provision all records showing the amount of contributions were destroyed.

No terminal period was contemplated by the members, except possibly the millenium, and at the same time they prohibited any division of the trust properties during the interim, not only by express terms, but by their voluntary omission to provide for any successor to the properties by way of remainder over or joint tenancy.

If the members sacrificed their heirs by the creation of the perpetual trust in favor of the society, it is equally clear that they carefully provided against the selfishness or cupidity of succeeding members should they attempt to divide the property of the society amongst themselves. Under the theory of the appellants, if the society comes to an end from any cause whatsoever, a resulting trust ensues, and the heirs of those deceased members dying in the society since 1836, who were only to be deprived of their inheritable rights in favor of what was intended to be perpetual trust, must, on failure of such trust become distributees by way of resulting trust. The correctness of this contention we think has been practically decided by the United States Supreme Court in the case of Nachtrieb *vs.* Harmony Society and in Hopkins *vs.* Grimshaw, quoted in the Argument, pages 51 and 112, respectively.

The Article of 1836 is the only material article bearing upon

the property rights of the plaintiffs, while the Articles of 1805, 1821, 1827 and 1847 are material in considering the character of the trust, the purposes and principles of the society, etc.

These articles show that the society was governed by a single patriarch until the death of Father Rapp in 1847, when a Board of Elders, with the same autocratic dominion, possessing absolutely the powers of *self-perpetuation* and the *sole right to elect members into the society*, was introduced, thus continuing the patriarchal system as heretofore and down to the date when the present complainants allege the society was dissolved.

The society is an unincorporated association, holding lands, tenements and personalty in perpetuity; governed by an oligarchy, and founded upon a system of community of property, in which under the Article of 1836 all members were equal and joint owners thereof. This association was neither created, as or at any time in its history became, a religious, charitable, literary or scientific association.

After the society settled at Economy it built a large town; the property extends along the Ohio river for a distance of about three miles, and back a distance of perhaps a mile, comprising over three thousand acres of very rich soil and heavily timbered land. It is located about 15 miles below Pittsburgh on the eastern shore of the Ohio river, and to-day it is deemed the most valuable town site within fifty miles of Pittsburgh. It is well surrounded by villages, towns and extensive manufacturing plants. Hundreds of wooden and brick residences were built; also warehouses, granaries, barns, silk and woolen mills, saw-mills, flour mills, and numerous shops for manufacturing shoes, clothing and other necessities of life. Agriculture in its broadest sense largely occupied the members for many years; stock raising and dairy produce were also important items. Later on the profits of such joint labor were invested in valuable stocks and bonds; then the investments went into outside industrial enterprises and gradually the trustees began entering into numerous business enterprises, owned wholly by the society in Beaver County or adjoining counties, followed finally by becoming silent or active partners in numerous manufacturing concerns, railroads, cutlery works, coal companies, banks, etc., throughout Western Pennsylvania. As the membership decreased the

wealth multiplied, and so rapidly did the original members of the society die that in later years it became the custom of the society to replenish its decreasing ranks by electing new members; this was absolutely necessary, as the society, being a celibate one, its ranks could only be maintained by calling in new members. The failure of the Board of Elders to elect new members, whatever the desires of the members not on the board, meant death to the society as a communistic association.

On January 1st, 1890, the society had about the average number of members of the few preceding years. Jacob Henrici was Senior Trustee, having been elected in 1847; Jonathan Lenz was Junior Trustee, elected in 1867. Three members of the Board of Elders died in the beginning of January, 1890; among them Mr. Lenz, the Junior Trustee. These vacancies were not filled by a vote of the members of the society, or were their successors elected from the members of the society itself, but the remaining members of the Board of Elders, it is alleged, elected John S. Duss, Jacob Nicklaus and Herman Fischern, three employes of the society, who were on the pay roll up until the date of their selection. Mr. Duss' history and antecedents are referred to in the argument. The defendants alleged that these three persons were legally elected, becoming members of the Board of Elders and of the society the same day. Such a proceeding had never occured before. The Board of Elders, under the Article of 1847, had the sole right to elect members into the Society; but the applicants for admission were generally expected to serve a year's probation before formally entering the society. While it seems to be true that this self-perpetuating board could elect to vacancies in the board whom they pleased in the society, yet never before had they gone over the heads of the members to select outsiders for the board.

Three weeks later, on February 13th, sixteen new members were elected, including Susie C. Duss, the wife of J. S. Duss. About July 1st, Ernest Woelfel, a comparatively young man who had succeeded Lenz as Junior Trustee, died suddenly. Mr. Duss was elected by his colleagues to fill the vacancy. Shortly thereafter the said Duss and his wife, and two children took up their residence in the Great House. This was the first time since the introduction of celibacy, in 1807, that a trustee with a wife and children resided in the Great House and presided over the affairs of the society.

On December 25th, 1892, Father Henrici, the Senior Trustee, who had presided over the society for nearly fifty years, died at the age of 87. The next day J. S. Duss was elected Senior Trustee, and Samuel Sieber, the town constable, was elected to fill Duss' place as Junior Trustee; so that both trustees, who, by custom and under the articles of association, were the absolute rulers of the society, were men who but a short period before were mere employes of the society; and as Mr. Sieber, the new trustee, like Duss, had a wife these occurrences excited comment among the old members of the society, for it effectually destroyed the doctrine of celibacy, the very basis of the society's system of communism. The Lower Court in its opinion stated "about the year 1807, the community promulgated the doctrine of celibacy as being necessary for the success of a communistic society." Conditions were now favorable for disintegration, owing to the character and disposition of those into whose hands the society had fallen.

The uncontradicted evidence shows that from the time Mr. Duss became Senior Trustee in 1893, no new members were elected. Out of a membership of forty in 1890, some fifteen died, the shares of seventeen were purchased, and no one was elected into the society. By closing the door to admissions, which had never happened before, by the death of the old members of the society, who at this period were rapidly dying off, and by the purchase of the interests of the large number of younger members, this "community," was reduced to a few persons, all women but two, a number insufficient to fill even the Board of Elders and Trustees, and leaving no member in this communistic society to be governed. It was admitted that Mr. Duss at that time was the only one remaining capable of transacting the external and internal business affairs of the society.

On the 14th day of February, 1893, the following *members* of the Harmony Society filed a Bill in Equity in the Court of Common Pleas of Beaver County, Pa., praying for the dissolution of the Harmony Society, viz.: Benjamin Feucht, Rebecca Feucht, Henry Feucht, Margaret Feucht, Tirza Feucht, Dorothea Hoehr, Rebecca Lautenschlager, Edward Kellerman and Christina Rall, the defendants in said bill being the members composing the Board of Elders and some thirteen others. While the master frequently refers to this proceeding, he, throughout his long opinion,

which is filed with the defendants' numerous exhibits, fails to include a copy of this bill in his report, or even give a summary of all of its more important allegations, although he makes it a means of several important findings of fact.

There is given in said bill a history of the Harmony Society, from its foundation down to the year 1847; the personal history of the plaintiffs; the recital of the abandonment of certain customs, and that the principle of celibacy had ceased to exist; that the society is wholly occupied with temporal affairs, and that equality and brotherhood have been put aside and forgotten; that the Board of Elders of the society had the power of perpetuating itself and of filling vacancies among its own number without any of the other members of the society having a voice in their selection; that a majority of the members of said Board of Elders were an evil example and offense to those who still cling with affection to the primitive form and faith of said society; that John S. Duss and Samuel Sieber, in the exercise of the power and authority of their positions as trustees, declared it to be their purpose to abolish the pursuit of agriculture and the long standing customs of the society, and that it was their purpose to sell the property and the land of said society and to make the same solely a manufacturing society; that Trustee Duss had recently sold, assigned and disposed of all or substantially all of the valuable dividend-paying stocks in numerous companies and corporations, amounting to over two millions of dollars, ostensibly for the purpose of paying debts, thereby diverting the assets of said Harmony Society from the plaintiffs and other members; that said J. S. Duss had in his hands the management of all the business affairs of the society; that his said co-trustee and said elders are entirely under his control and merely act as his servants and agents.

And the prayers for equitable relief *inter alia* were as follows:

That a receiver be appointed by the Court to take charge of and manage the affairs of said society until the winding up of the same and the distribution of its property and assets, real and personal; that the Court order and direct a dissolution and marshalling of its assets, of its accounts, and a winding up of its affairs, and a division and distribution of its assets, real and personal, either by means of a sale under the order of Court, or in such other

manner as may be most expedient to and among the parties equally and equitably entitled thereto, and that the petitioners therein may receive their just share and proportion of said assets, real and personal, in severalty. On a hearing upon *ex parte* affidavits a preliminary injunction was refused, without any opinion being filed. The defendants then answered, denying complainants, averments, and later before final hearing the bill was dismissed, as will appear hereafter.

It is at this period appellants assert that arrangements were entered into *for the quick and secret dissolution of the society and a division of its wealth among the few members, without any regard to the property rights of the heirs of deceased donors.*

With Henrici and Lenz, the old trustees out of the way, with the Board of Elders composed of raw recruits from the Economy farm, with two young trustees (having wives and children) and not in sympathy with the doctrine of "communiy of goods as adopted in the days of the Apostles," it is not surprising that the temptation to seek a division of this property in the end prevailed.

While the so-called Feucht bill was pending, asking for a receiver and a distribution of the assets of the Harmony Society among those entitled thereto, Senior Trustee Duss, in conjunction with a corporation attorney, who had taken up his residence in the town of Economy, began distributing the money and real estate of the society among the members, receiving from each a quit claim and acknowledgment of full satisfaction of their interest or share in the property of the society.

While considerable evidence was taken covering this period, and the master has quoted such portions of it as would tend to sustain his finding, he carefully refrained from printing in his report a single one of these quit claims, although their materiality under the averments in the complainant's bill was self-evident. The present record contains all the so-called deeds of liquidation, under which seventeen members received in money and land something over one hundred thousand dollars. We print as a part of the history of the case one of these deeds of settlement:

EXHIBIT NO. 5.

RELEASE OR QUIT CLAIM OF SIGMUND STIEFVATER.

"I, Sigmund Stiefvater, a member of the Harmony "Society, at Economy, Beaver County, Pa., being de- "sirous of terminating said membership and withdrawing "from said society, do declare that I do hereby of my own "wish and purpose surrender and renounce forever my "membership in and connection with said society, like- "wise all my rights, interests and privileges as a mem- "ber thereof; and further, in consideration of the sum "of five thousand ($5,000) dollars in cash paid to me "out of the funds of said society by John S. Duss and "Samuel Sieber, trustees, receipt whereof is hereby ac- "knowledged, I do hereby release, cancel and discharge "any and all claims whatsoever which I, my heirs, assigns "or lawful representatives may or could ever have against "said society or its trustees, its property or assets or any "part thereof, I hereby declaring all such claims to be "fully compensated, settled, released and discharged. "And I do further declare that I have accepted said sum "of five thousand ($5,000) dollars and have surrendered, "compromised, settled, released and discharged all claims "that I or my heirs, assigns or lawful representatives have "or could have against said society, its trustees, its prop- "erty or assets or any part thereof (entirely at my own "solicitation and without any invitation, request or so- "licitation so to do, by said trustees or either of them), in "the full knowledge of the fact that said society owns in "addition to its property at Economy and Leetsdale "several thousand acres of land in Michigan, and in War- "ren County, Pa., also certain tracts of land in Allegheny "County, Pa., also stocks and bonds in various railroad, "mining, manufacturing and bridge companies to the "nominal amount of several hundred thousand dollars, "also various judgments, mortgages and unsold lots in "Beaver Falls and New Brighton of the estimated value "of several hundred thousand dollars; also while it may "be possible that said society may have a large amount "of property after the payment of its debts I am entirely "satisfied to accept as my full share and interest therein "said five thousand ($5,000) dollars, and I will never "hereafter make any claim for further or other payment "of any sum whatever, nor the delivery of any other prop-

"erty of said society to me no matter what may be the "value of the property and assets of said society after "payment of its debts (all such claims thereto being by "me hereby expressly barred and discharged).

"Witness my hand and seal this seventeenth day of "May, 1893.

"In presence of "SIGMUND STIEFVATER."

"W. H. BREITENSTEIN."

"This release was translated into German by the trus- "tees, John S. Duss, and Samuel Sieber, and he said that "he understood the same before signing."

"W. H. BRIETENSTEIN."

From the above formal instrument it appears that Mr. Duss proceeded as a liquidating trustee would proceed, in lieu of the receiver sought for under the Feucht bill; except that such amicable partition was unknown to the public, while under the Feucht bill the heirs of deceased members could intervene for the purpose of conserving the trust or offering proof of their interest in the estate of the defunct society. Not only do these quit claims for the first time in the history of the society by express terms recognize individual ownership in the property in the society, but they acknowledge in consideration of the money paid or land conveyed that he or she does "hereby release, cancel and discharge any and all claims whatsoever which *I, my heirs, assigns or lawful representatives,* may or could ever have against said society or its trustees, its property or assets, or any part thereof, I hereby declaring all such claims to be fully compensated, settled, released and discharged;" and again, after reciting the various properties and assets of the society, the paper provides, "I am entirely satisfied to accept as *my full share and interest therein five thousand dollars,*" *etc.*

Another paragraph in Exhibits Nos. 10 and 12½, signed by eight members, is as follows: "While it may be that said society may have and be *the possessor of several hundred thousand dollars worth of property after paying all debts* I am entirely satisfied to *accept as my full share therein* the sum of thousand dollars." After these settlements began the Feucht bill was dismissed by consent of the plaintiffs.

The evidence shows that at this time there were about forty members in the society, and that each member as he was settled with, received on the average about five thousand dollars—so that they apparently got their full per capita share of the assets of the society, i. e., one-fortieth of several hundred thousand dollars—without the risk of its subsequent diminution or any delay in payment. As a natural result the members began leaving promptly. The evidence taken in this suit developed the fact that after "paying all debts" there remains between four and five million dollars of assets. By the wording in the above quit claim, it appears that Mr. Duss could, if it were legal, dissolve the society by paying off from time to time all the members, so that he and his wife would alone remain, becoming thereby the self-created survivor with millions of assets undisposed of. Further comment is necessarily reserved for the argument. In addition to the payment of money, five members received *real estate* of the society worth over $25,000. (*Vide* Exhibit 10, Record, page 240.)

It is true that the former trustees had on some occasions been accustomed to make small donations to retiring members, but with one exception, such amounts ranged from fifteen to fifty dollars.

As for instance, in the year 1890, when Jacob Henrici was Senior Trustee and Mr. Duss Junior Trustee, Lena Fritsch, a member of the society, desired to withdraw and return to Germany to live. The following are the two receipts she signed (Record, page 240):

EXHIBIT NO. 8.

RECEIPT—LENA FRITSCH.

"After having become on the 14th day of February, of this year, a member of the Harmony Society at Economy, I have this day (October 22, 1890,) withdrawn myself, of my own free will therefrom, and have ceased to be a member of said society; have also received this day from Henrici and Duss, trustees, ninety-five ($95) dollars, in order to pay my traveling expenses and such like, which sum is in full of my claims on said society or any member thereof."

"Witness: "LENA FRITSCH."

"H. GASSER,

"J. E. HIRSCH."

EXHIBIT NO. 9.

RECEIPT—LENA FRITSCH.

"The undersigned hereby declare that she has received from Messrs. Henrici and Duss, trustees, the sum of twenty-four ($24) dollars, for the purpose of an advance to go on a trip, and she promises herewith to repay this sum in case her circumstances in Germany shall make it possible for her to spare this money.

"Witness my hand, this 23rd day of October, 1890.

"Attested by "LENA FRITSCH."

"J. E. HIRSCH."

At the time Lena Fritsch departed the appellants do not contend that the scheme of liquidation was then being carried out, but that the same took form in the beginning of the year 1893, shortly after the death of Senior Trustee Henrici, who presided over the society for nearly 50 years. When she left, the society was apparently prosperous, and yet she is made to agree to return the trifling sum of twenty-four dollars. When the other members began taking "their share" in 1893, Mr. Duss asserts, and is supported by the master, that the society was hard pressed for ready money. One of the members, Leonard Hoerer (Exhibit No. 7), had joined the society about 90 days before and left with thousands of dollars in consideration for signing a paper that acknowledged "his interest" in the property of the society was fully compensated. As this tribunal is called upon to declare whether these later payments of money and conveyances of land were mere "donations," as found by the master, or on the other hand, deeds of settlement and liquidation, we have printed in full all of these Exhibits in the Record.

The members thus retiring before the present bill was filed include about all the male members of the Board of Elders of the Harmony Society, including the Junior Trustee and all the men having in charge, as foremen or superintendents, the various departments of labor and industry, such as farming, wagon shops, saw mills, tailor shops, etc. The two remaining male members, Messrs. Kellerman and Gilman (the former of whom has since died), were negotiating for their interests with Mr. Duss, when notice from the present appellants apparently stopped further payments.

The master found that the Feucht bill caused these withdrawals.

This, appellants contend, is immaterial, although it may be true in one aspect of the case, viz., that the members having concluded to wind up the society for various reasons, and becoming alarmed over Duss' peculiar statement of assets and liabilities, were willing to have Mr. Duss, by amicable partition, put into practical effect the very thing sought for by certain members under the Feucht bill. The evidence shows that three-fourths of the members who had been settled with at the time of the filing of the present proceedings were not only defendants in the Feucht bill, but were the avowed friends of Mr. Duss, and with few exceptions occupied all the positions of influence and importance within the society; the reasons given by the master for these settlements are so extraordinary, and his construction of the quit claims as mere "donations," so peculiar that an analysis of this same must be confined to the argument.

After all the male members but one of the Board of Elders had been settled with and retired, the Board of Elders was filled with six remaining female members, who comprised the remnant; an event without precedent in the society, for up to that time a woman had never been elected an elder. The women thus selected, with the exception of Susie C. Duss, the wife of the Senior Trustee, were either old, infirm or ignorant, or were women recently admitted into the society and could not talk English.

The ready money of the society having now been apparently exhausted (some of the members being paid out of a mortgage that was put on the property, in order to meet in part the payment of their shares), the next step was taken for the alienation of the homes and all the real estate of the society by putting it in such shape that the survivors would hold it as personal property.

Mr. Duss, in active co-operation with his attorney, devised a plan for the conversion of all the real estate of the society into the capitalistic stock of a business corporation. At this time he was aware that the heirs of deceased members were protesting against the division going on. He, in conjunction with the survivors, conveyed the entire town of Economy, and its fields of agriculture surrounding it, to a corporation known as the "Union Company." By that act, the appellants contend the society, then in a process of liquidation, was wiped out entirely as a recognizable entity.

The Union Company was organized very quietly, under the General Corporation Act of 1874, by Mr. Hice, attorney for the society, his two sons, and W. S. Morrison and W. J. Stuart, on January 17th, 1894 (plaintiff's "Exhibit No. 27," of Record). Its capital stock was fixed at $5,000, with 100 shares of the par value of $50, and the application stated that the "said corporation is formed for the purpose of the purchase and sale of real estate, or for holding, leasing and selling real estate," and that "the business of said corporation is to be transacted in the borough of Beaver, County of Beaver, State of Pennsylvania." This application was granted by the Governor, and on the 16th day of February, 1894, it was recorded in Beaver County.

The evidence shows that the ulterior purpose of organizing the Union Company in the above manner was to defeat the present complainants, and at the same time affect the public, particularly the State of Pennsylvania, in the name of which escheat proceedings had been commenced, or were contemplated. No sooner was the charter obtained on the application of Hice *et al*, than simultaneous steps were taken to increase the capital stock of the Union Company to $400,000, and to have the trustees of the Harmony Society convey all the land of the society to the Union Company in payment of the increase of part of the capital stock.

Plaintiffs' Exhibit No. "28," is the authorization of the increase of capital stock, and the stockholders who voted were the same individuals who appeared in the application for the charter.

Plaintiffs' Exhibit No. "29," is a copy dated April 12th, 1894, of the treasurer's return of increase of capital stock from $5,000 to $400,000—"said additional stock (395,000) being issued for real estate situate in Allegheny and Beaver Counties, Pennsylvania, which has been conveyed to the company.

Defendants' Exhibit "H," page Record, purports to be an authorization by the members of the Harmony Society to the trustees thereof to convey all the lands of the society to the Union Company in consideration of stock to the extent of three hundred

ninety-seven thousand and five hundred ($397,500) dollars, out of a total of four hundred thousand ($400,000) dollars. Next comes a whereas in said exhibit as follows:

> "WHEREAS, The trustees of said society are advised that "a suit is about to be brought against it in the name and "on behalf of a large number of persons who claim to be "lawful heirs of certain deceased members of said so- "ciety, the object of said suit being to compel the society "to pay large sums of money to said persons as portions "of the society's property claimed to be due to said per- "sons as heirs of such deceased members, which claims we "regard as totally unfounded."

This averment is important as showing the knowledge of the pendency of the present proceedings and a desire to put the property out of reach before the legal proceedings began.

Then said exhibit recites the advantage of having the land of the society represented by capital stock of an incorporated company, so that the same might be disposed of more readily; then follows the consent and request of the members that J. S. Duss and G. Riethmueller, trustees, convey to the Union Company "all the lands, tenements and hereditaments, situate in Allegheny and Beaver Counties, Pennsylvania, now owned by the society, to the end that all said lands, tenements and hereditaments may be *owned, held and managed by said incorporated company, and be sold and otherwise disposed of* from time to time, in pursuance of proper corporate action, ***as may be determined by the directors and officers of said incorporated company.***" This paper was executed April 11th, 1894, and contains in addition to the individual signatures and acknowledgments of the surviving members, also the separate acknowledgments of Johanna Hermansdoerfer and Susie C. Duss, wives of two of the members of the society, indicative apparently of the fact that individual ownership and dowry rights were now recognizable in the property.

In pursuance of this authority the property of the society was conveyed by the trustees to the Union Company, which land not only included *the home of the society*, with its mills, factories,

shops, the separate home of each member, the residence or Great House of the trustees, the society's house of worship, and the gardens and surrounding farms, all these passing to this corporation *for the purposes of sale as its directors might determine*, and the property conveyed also included the society's cemetery, containing the remains of Fathers Rapp, Baker, Henrici and Lenz, and the other deceased members of the society since 1825; *which burial place also contained the bodies of the parents, the brothers and sisters or other near kinsmen of the present complainants.* In said deeds to the Union Company the society's remaining property in the town of Beaver and all that in the County of Allegheny is likewise included.

The secrecy of these proceedings prior to the time the present complainants filed this bill, resulted in the allegation in paragraph 20th thereof, that the conveyance to the Union Company was without the consent or knowledge of the members, other than the trustees and Mrs. Duss. In this they were mistaken, having no knowledge of Exhibit "H." It is therefore a fact that the conveyance of the society's home to the Union Company was authorized so far as the personal assent of the members could bring this about.

As the results of the transfer of all the property by the surviving members of the society to the Union Company, the said members became merely *tenants at will* of the Union Company; the authority having been given to make a conveyance to the corporation, contemplating and directing the sale of said real estate, it became possible and was the duty of the directors of said Union Company to sell the property, thus turning the realty into money, so that the joint and indivisible property of the society became personalty, as it is necessarily to-day, when represented by the capital stock of the Union Company. The alleged existing communistic society being without a home and not bound by the Articles of Association to remain anywhere in particular, either within the State of Pennsylvania or even in the United States, is in a position to depart at will, taking with it in cash or stock certificates, the very property now in controversy, all of which is referred to in the argument.

The Union Company, instead of having its place of business in Beaver, Beaver County, after re-organization changed its office to the City of Pittsburgh, County of Allegheny, where its di-

rectors meet, composed (at the time the testimony closed) of two of the surviving members of the Harmony Society, and *three non-members*. Mr. Dickson testified that the directors of the Union Company managed all the affairs of the real estate covered or controlled by it, and that the Board of Elders have no control over it or the management of the results of the real estate of the Union Company.

When members of the Harmony Society filed a bill for dissolution, and later proceeded to distribute the assets of the society among themselves, and the remaining survivors conveyed the rest of the property to a private business corporation to be managed and sold by a Board of Directors, passing out of the control of the Board of Elders, the situation necessarily compelled appellants to act at once or not at all. Hence this proceeding.

It is unnecessary to repeat at length the allegations of the complainants, for they are based upon substantially the facts hereinbefore recited. That this Court may have before it in a condensed form some of the more important averments of the complainants, we print paragraphs 25 and 26 of said bill:

> "25th. That recently said Harmony Society has be-
> "come dissolved as aforesaid, that all of its purposes and
> "practices established as aforesaid by the founder of said
> "society, and by the ancestors of your orators, have been
> "abandoned; that its chief assets, consisting of bonds,
> "stocks and other securities, and the town of Economy,
> "with its buildings and the adjacent lands of said society,
> "consisting of some 3,000 acres, and which constituted the
> "basis of organization and business of said society, have
> "been sold and conveyed away by the said Duss as afore-
> "said in fraud, however, of the rights of your orators
> "and their co-tenants, and that by reason of the facts here-
> "inbefore set forth your orators and the said last mem-
> "bers, except the said Duss and wife, are now tenants in
> "common of all of said lands and tenements, and entitled
> "to partition thereof in proportion to their respective in-
> "terests.
>
> "26th. That for some time past the members of said
> "Harmony Society have been retiring therefrom and have

"received the amount of their interest in said association "in the land or money, or both, the land being set apart in "severalty to them, and have released all of their rights and "interests in said association in consideration for such "payment or conveyance to them, and that by said retire- "ment and withdrawal the membership of said association "has been reduced to the persons hereinbefore named "members; that by common consent this association has "ceased to exist as an association, and that if the property "thereof has ever been impressed with a trust (which "your orators deny as being contrary to public policy and "void in law or equity), such trust has wholly ceased, and "the assets of such dissolved association have reverted to "the donors thereof, among whom were the ancestors and "intestates of your orators."

It was duly established in this case that the present appellants are the sole next of kin of members dying in the society since 1836, being the sons, brothers and nephews of leading members of the Harmony Society. It was shown, for instance, that in 1826, Christian Schwartz, at the age of three years, went with his parents and five brothers and sisters to Economy. All became members of the Harmony Society and died in fellowship, except Christian Schwartz, who, when reaching the age of twenty-one, after working in the society from childhood, desired to marry, departed with the niece of Mrs. Kriter, a member of the society, taking up his residence in Charleston, West Virginia. Several members of the Schwartz family did not die until the year 1889; most of them serving the society faithfully for more than sixty years, working in the mills, in the factories and in the fields, and serving on the Board of Elders; the total service of this family alone aggregating more than three hundred years of unrequited toil. Their bodies, together with the remains of the other relatives of the appellants, lie in the quaint graveyard of the Harmony Society, which has been sold to a business corporation without any reservation made for the protection of their remains from disturbance. The appellants filed this bill to determine whether the heirs could prevent such acts of spoilation, and the subsequent division of the fruit of their kinsmen's labor among the self-created surviving members, who instead of striving to perpetuate the society are now dividing its property and accumulations among themselves. *This is, in reality, the sole issue in the case.* The appellants contend that if this Court

does not reverse or modify the decree of the lower Court dismissing the bill, that no bar whatever stands in the way of the purchased withdrawal of the other members, and a further conversion and devolution of the assets of the society, so that they will be beyond reclamation by those entitled thereto.

The master's report is open to criticism which will be more fully disposed of on argument. It is suffcient to say in this place that he recommends a decree for the dismissal of the bill and imposes the costs upon the complainants, first to be advanced by defendants. The record shows that the master, on March 15th, 1899, received from John S. Duss, trustee, his fee of $3,000, fixed in this case.

The appointment of a master in Equity causes in the United States Court is an unusual proceeding, but his appointment resulted from frequent refusals of Mr. Duss, before the examiner, to answer questions deemed important by the complainants, so that it was resorted to for the purpose of saving time on arguments on questions certified to the lower Court.

In regard to the financial transactions growing out of the wrecking of the Economy Savings Institution, a private partnership bank, located in the town of Beaver, Pa., it is only necessary to state that none of these matters are now before the present Court for review, but as the master saw fit in his report, in line with the argument of defendants' counsel, to devote much space to this subject, it is proper to state that the appellants only questioned the legality and propriety of Mr. Duss' methods in turning nearly thirteen hundred thousand dollars into a bank that the evidence shows was utterly wrecked by two of its officers and partners, who were not members of the Harmony Society, and the transfer of this vast sum, constituting the greater portion of the investment funds of the society, into the treasury of this broken bank was done apparently without the knowledge or consent of the members of the Harmony Society. It appears to have been the act largely of Mr. Duss and his attorney, Judge Hice, the latter one of the partners in this bank. It seemed to appellants that the situation that confronted Mr. Duss warranted the appointment of a receiver for this bank, so that its debts might be paid according to law, thereby collecting from these outside partners either the full loss or at least their *pro rata* share of the

same. This was never done, and Messrs. Hice and Reeves, two of Mr. Duss' most important witnesses in this case, have been relieved from their partnership liability to this bank. At that time the society had only a direct indebtedness of three hundred thousand dollars, amply secured, and if the society became hard pressed for money, it was largely due to Mr. Duss' hasty methods of settling the bank's affairs without the intervention of the courts; and why the master should devote so much space to this subject is inexplicable, for we think that Mr. Duss is open to censure rather than to praise for the manner in which he diverted nearly a million and a half of the society's money. But whether this is true or not we cannot see how these financial questions in any wise relate to the case as it now stands on the present Assignment of Error. Should a receiver be appointed by this Court, Mr. Duss will then have ample opportunity to explain his very peculiar methods of financing a bank in which this society was alleged to be, through its trustees, a partner, while the other partners who had largely caused its downfall contributed nothing.

The report of the master dismissing the bill was sustained by the Circuit Court in a very brief opinion, no independent consideration being given to the legal questions raised then and renewed in the present Assignment of Errors. The Court, however, gave as a reason for imposing the costs upon the complainants that they had charged immorality and had failed to prove it. Immorality was proved and so found by the master, except in the case of Mr. Duss. As the Circuit Judge, in an interlocutory opinion had denied the complainants the right to offer proof against Mr. Duss, *vide* Record, page 191, we have assigned this as error. The Circuit Court of Appeals affiirmed the opinion of the lower Court, without passing upon any of the forty-eight assignments of error and adopted *verbatum* the brief opinion of the lower Court—so that the law and facts established in this cause rests, primarily, upon the opinion of the master, whose appointment was brought about to save loss of time caused by a contumaceous witness. The principal facts are admitted in this case—the differences arise on the legal inferences to be drawn therefrom.

ASSIGNMENTS OF ERROR.

First. That the Court erred in affirming the decree of the Circuit Court of the United States for the Western District of Pennsylvania, which decree is as follows:

> "And now, this 13th day of February, 1899, upon consideration it is ordered, adjudged and decreed that the "plaintiffs' bill be, and the same is hereby dismissed; and "it is further ordered, adjudged and decreed that the "plaintiffs pay the costs, including the master's fees, to "be fixed, *seg. reg.*, and which, together with his compensation as examiner, shall be paid to the master in "the first instance by the defendants.—BY THE COURT."

Second. That the Court erred in holding that the appellants were barred from maintaining their bill, and from the relief sought thereby, because the appellants had no claim on the property of the Harmony Society through any of their ancestors, and because, if the appellants have such legal demands against the society, those demands have been barred by lapse of time.

Third. That the Court erred in holding that the Harmony Society is in full life, and that there had been no dissolution of the society by the common consent of the members, or by their acts.

Fourth. That the Court erred in holding as follows:

> "It is not necessary, nor would it be proper for the "Court to express any opinion as to what would be the "legal status and the ultimate disposition of the property "of the Harmony Society were its existence terminated "by the death of all its members, or were the dissolution "of the society otherwise effected. No such questions "are before us; we are not dealing with the assets of a "defunct or dissolved association."

Fifth. That the Court erred in not finding that by the agreement of 1836, all who were then members of the society, and who afterwards became members of the society, became owners in and to an equal undivided share of all the property of the said society, real and personal, which by the agreement of 1836 was converted into a joint and indivisible fund, and that, therefore, upon the event of the dissolution of the association from any cause whatever, in the absence of provisions in that agreement for the distribution of said fund, the said joint and indivisible fund is to be distributed among all persons dying in the society, and the legal heirs and representatives of those who died in the society.

Sixth. That the Court erred in refusing appellants' contention that the trusts created for the benefit of the Harmony Society violated the rule against perpetuities, and is therefore void, and in consequence, in default of a remainder over, or other provision, the same reverts to the members of the society if living, or in the event of death, to the heirs and legal representativs of those who have died members of the society since 1836.

Seventh. That the Court erred in refusing appellants' contention that the Harmony Society, being unincorporated and not organized for any religious, scientific, charitable or literary purpose, is incapable of holding real and personal estate, directly or through trustees, for its benefit and that the trusts created for the benefit of the said society are void and revert by way of resulting trust to the members of the society living and to the heirs and legal representatives of those who have died members of the society since 1836.

Eighth. That the Court erred in refusing appellants' contention that the purposes and principles, mode of organization and government prescribed and contemplated by the various articles and constitutions of the society, are against public policy, and that the trusts created for the benefit of the said society are therefore void and revert as aforesaid by way of resulting trust to the donors, if living, and to their heirs and representatives, if dead.

Ninth. That the Court erred in refusing plaintiffs' contention

that the constitution and agreements of the Harmony Society contemplated no end to the life of the society, and made no provision for such event, and the trusts provided no remainder over upon the death or dissolution of the society from any cause, or upon the failure of the trusts from any cause, and that the said trusts did not create a joint tenancy with right of survivorship in the members, but was an express trust for the society as a society.

Tenth. That the Court erred in holding as follows:

> "There has been no dissolution of the society either "by the common consent of the members, or by their "acts. The membership indeed, has become greatly re-"duced, but the rights of the society as now constituted, "are as sacred in the eye of the law as they were when "the membership was twenty-fold greater."

Eleventh. The Court erred in refusing to hold that numbers are an essential feature of the principle of communism as established by the articles of association, and that the paucity of numbers of surviving members disabled the society for maintaining the principles for which the society was founded, or the mode of agreement provided for in the said articles of association.

Twelfth. The Court erred in refusing to hold that the partition of the assets and property of the society, among the members just prior to the filing of plaintiffs' bill, was not an act of liquidation and dissolution.

Thirteenth. The Court erred in finding that the conveyance to the Union Company did not work a dissolution of the society, and that the same did not wholly terminate the existence of said society, not only as to the government thereof by the Board of Elders and by the members, but also as to the ownership of any property.

Fourteenth. That the Court erred in refusing to appoint a receiver and decree the other reliefs prayed for in the bill.

Fifteenth. That the Court erred in imposing the costs of this case upon the plaintiffs who are admittedly the next of kin of ancestors dying in the society, and who sue as entitled to the trust estates of the society by way of resulting trust.

ARGUMENT.

This appeal is before this Court by allowance of a writ of certiorari to the United State Court of Appeals for the Third Circuit. The Court of Appeals affirmed the decree of the Circuit Court of the United States for the Western District of Pennsylvania, in an opinion by Mr. Justice Gray, which was adverse to the appellants' cause.

The opinion of Mr. Justice Gray adopts in large measure the opinion of Judge Acheson.

The important questions now raised by appellants' assignments were disposed of mainly in both of these opinions, by a general aaffirmance of conclusions of the master, and consequently in the argument of this cause, appellants have occasion to review the master's conclusions.

The subject matter of this controversy consists principally of about three thousand acres of land situated on the Ohio river, having a frontage of over three miles on the river, about fifteen miles below the City of Pittsburgh. On each side of this land and opposite to it, are great industrial establishments. The land itself is traversed by two great railroad lines; on it the town of Economy is built, containing about three hundred houses, the great house, mills, manufactories, vineyards, and many very productive and valuable gas and oil wells, and the graveyard where repose the remains of members of the society who have departed this life since the year 1825. The value of this property is at least four millions of dollars.

The society or that which is called the society, has been reduced

from great numbers down to eight members, most of whom were admitted to membership in 1890, the others in the year 1888; and none of them have ever contributed any money to the society. While the laws of the society call for a Board of Eldership of nine members, there are but eight members of the society living, and of these six are women, and mostly advanced in years, except John S. Duss, the present patriarch, and his wife, who are in the prime of life, and who by the tables of mortality, have largely in their favor the chances of surviving the other members. No new members have been admitted since the year 1893, and since that time seventeen of the younger members have been allotted the alleged value of their interests in the property of the society, and have left the membership; and death has taken all the rest except the eight who now survive.

Under the laws of the society, the real possessors of the property of the society, with the power and enjoyment thereof, are the trustees; for the other members can claim nothing but their lodging, maintenance, clothing, drink, medicines and the privileges of church.

The main underlying question is, shall the last survivor take this magnificent estate as his very own, because he is, or may come to be, the last survivor? Is this estate in its tenure a joint tenancy with right of survivorship, or a system of tontine, built up by the fortunes of dead and gone members, by their unrequited labors of many years, their deprivation of all social and civil life, during which they were subjected to a degraded servitude, all for the enrichment of some unforeseen and unknown adventurer, who might by prearrangement or otherwise come to be the last surviving member of the society.

The appellants have found themselves unable to bring before this Court the voluminous testimony taken before the master, and are therefore unable to review all the errors which would thereupon be made manifest. They are necessarily restricted now to those errors which rest upon conclusions, and can be supported upon the limited record of this case.

So much, therefore, of the master's report as deals with accounts and figures; of reasons why certain acts were done by the trustees; of alleged wrongful attacks upon the conduct of John S. Duss, and of specific disreputable acts constituting the substitution of debauchery and vice in those in control of the society —which otherwise would be matters assignable as errors—cannot be considered under the assignments of error to which we are limited by circumstances beyond our control.

PROPOSITIONS SUBMITTED BY APPELLANTS.

The propositions which counsel for appellants propose to argue are briefly, these:

FIRST. The articles or agreements of the Harmony Society executed prior in date to those of October 31, 1836, provided for a free gift or donation of all the property of persons seeking to be adopted into the society, to George Rapp and his associates, for the USE AND BENEFIT OF THE COMMUNITY; upon the condition however, that upon his withdrawal from the society, the member withdrawing, was to receive back the value of his contributions, without interest, in instalments.

SECOND. By the articles of October 31, 1836, all the members of the society agreed with each other, to surrender this right of property restitution which each possessed, and to convey the same to ALL the members in equal shares. To that end they entered into this compact:

> "All the property of the society, real, personal and "mixed, in law or equity and howsoever constituted or "acquired shall be deemed, now and forever, joint and "indivisible stock. Each individual is to be considered "to have finally and irrevocably parted with all his for- "mer contributions, whether in lands, goods, money or "labor, and the same rule shall apply to all future con- "tributions, whatever they may be."

The articles of 1836 constituted a contract between individuals to whoch the society as such was not a party.

THIRD. The property thus held, was impressed with a trust for the benefit and use of the society as such by those who then represented the ownership of this joint and indivisible stock. All future members were to become parties to the articles of 1836, and as each new member came in, he became owner of an equal share of the property, subject to the trust.

A. Thus the donors of all the properties of the society to the trust, are all the members of the society now living, and all those dying members of the society since the articles of 1836, and now represented by their heirs and legal representatives.

B. The sole donee of the trust was the Harmony Society; the members as such are not donees.

C. So long as the purposes of the trust are observed and maintained, the donors of the trust funds were entitled only through the society as the beneficiary, to any of the benefits of the trust; when they were not so maintained and observed, the property of the trust reverts to the donors by way of resulting trust.

FOURTH. The trust properties are and always have been held by absolute title and in fee simple, without disclosure upon the face of the deeds of the trustee of the character of the grantees, or any reference to any trust, or with any remainders over. The trusts, therein, are however established by declarations of trusts.

No terminal period of the life of the society is prescribed; no provision is made for the ultimate destination of the trust properties upon either the death of the society, or failure of the purposes of the trust. There are no provisions any where creating a joint tenancy with right of survivorship, or systems of tontine.

FIFTH. Assuming then the death of the society from any cause—a failure of the Trusts created from any cause—the CORPUS of the trust property, reverts by way of resulting trust to ALL members of the society, dying in the society since the articles of 1836, their heirs and legal representatives, and to all living members in equal shares, AS DONORS of the joint and indivisible stock, constituting the corpus of the trust estates, and not to the surviving members as donees, or beneficiaries of the trust.

SIXTH. Among the class of donors and distributees as aforesaid, are the plaintiffs, who are the heirs and legal representatives of ancestors, donors, dying in the society, since 1836.

SEVENTH. Assuming, ex gratia argumentii, that the trusts are validly created for the benefit of the society, AS A SOCIETY, counsel for appellants claim that the existence of the society has terminated by acts of liquidation, partition, and divestiture by the trustees of title to all its property; by paucity of members, and by inability and incapacity to enforce the scheme of government, and the principles and purposes of the society, and hence the purposes of the trusts have failed, and the property reverts as aforesaid.

EIGHTH. Independently of the life or death of the society, the trusts are void in law:

(a) The principles, purposes and form of government of the Harmony Society, for the maintenance of which the trusts were established, are contrary to public policy.

(b) The society being unincorporated, and having no religious, charitable, literary or scientific purpose in the legal sense is incapable of holding property directly, or through trustees for its benefit.

(c) The trusts violate the rules against perpetuties, and the Pennsylvania Statutes regulating accumulations.

And for these or any of these reasons, the corpus of the trust properties reverts to the donors as aforesaid, by way of resulting trust, clear of the trust, and hence, the decree of the Court of Appeals should be reserved.

I.

By the articles of the society prior to those of 1836, contributing members to the trusts reserved the right to restitution of their property upon withdrawal from membership.

The first known articles affecting the individual rights and duties of persons admitted to membership in the society, are dated February 5, 1805, are in evidence as Exhibit "A" and are printed in this record at page 218.

For the more ready reference to its terms we embody those articles at length in this argument.

To this agreement the Harmony Society is not a party. It is wholly between individuals; those who are already members and those who propose to become members are covenanting with each other as to the terms and conditions of adoption, and the rights of adopted members.

> "Be it hereby known to all who need to know it that "the following agreement has this day been made and "concluded between us, the subscribers of the one part, "and George Rapp and his associates of the other part:
>
> "ARTICLE 1. We the subscribers, on our part and on "the part of our heirs and descendants, deliver up, re-

"nounce and remit all our estate and property consisting "of cash, land and chattels or whatever it may be, to "George Rapp and his associates in Harmony, Butler "County, Pennsylvania, as a free gift or donation, for "the benefit and use of the community there, and bind "ourselves on our part, as well as on the part of our heirs "and descendants, to make free renunciation thereof, "and to leave the same at the disposal of the superin- "tendents of the community, as if we never had nor pos- "sessed it.

"ARTICLE 2. We do pledge ourselves jointly and "severally to submit to the laws and regulations of the "community, and to show due and ready obedience "toward those who are appointed and chosen by the "community as superintendents in such a manner that "not only we ourselves endeavor, by the labor of our "hands, to promote the good and interest of the com- "munity, but also to hold our children and families to "do the same.

"ARTICLE 3. If, contrary to our expectation, the "case should happen, and we jointly or severally could "not stand to it in the community, and we would within "a few or more years break our promises and withdraw "from the community, for whatever cause it may be, "never to demand any reward, either for ourselves or "children or those belonging to us, for any of our labors "or services rendered, but whatever we jointly and sev- "erally shall or may do, we will have all done as a vol- "untary service for our brethren.

"In consideration whereof George Rapp and his as- "sociates adopt the subscribers jointly and severally as "members of the community, whereby each of them ob- "tains the privilege to be present at each religious meet- "ing; not only they themselves, but also their children "and families, shall and will receive the same necessary "instructions in church and school which is needful and "requisite for their temporal good and welfare as well as "eternal felicity.

"ARTICLE 4. George Rapp and his associates prom- "ise to supply the subscribers jointly and severally with "all the necessaries of life, as lodging, meat, drink and "clothing, etc., and not only during their healthful days, "but also when one or more of them become sick or oth-

"erwise unfit for labor, they shall have and enjoy the "same support and maintenance as before; and if, after "a short or long period, the father or mother of a family "should die, or be otherwise departed from the com- "munity and leave a family behind, they shall not be left "widows or orphans, but partake of the same rights and "maintenance as long as they live or remain in the com- "munity, as well in sick as healthful days, the same as be- "fore, or as circumstances or necessity may require.

"Article 5. And if the case should happen as stated "above, that one or more of the subscribers after a short "or long period, should break their promise and could "or would not submit to the laws and regulations of the "church or community, and for that or any other cause "would leave Harmony, George Rapp and his associates "promise to refund him or them, the value of his or their "property brought in without interest, in one, two or "three annual installments, as the sum may be, large or "small; and if one or more of them were poor and "brought nothing into the community, they shall, provided they depart openly and orderly, receive a donation in money according to his or their conduct while a member, or as he or their circumstances and necessities may require, which George Rapp and his associates shall determine at his or their departure.

At present all we wish to do is to direct the attention of the Court to questions of property therein contained and the trusts therein created:

By Article 1, the candidates for adoption covenant on their part to deliver up to George Rapp and his associates at Harmony, Butler County, Pennsylvania, all their estate, consisting of cash, land or chattels, as a free gift or donation *"for the benefit and use of the community there,"* as fully as though they had never had or possessed it.

By Article 5, if for any cause one or more would leave Harmony, George Rapp and his associates promised to refund him

or them the value of his or their property brought in without interest in one, two or three annual installments, as the same may be large or small.

ARTICLES OF 1821.

The second agreement in order of time is dated January 20, 1821, and was executed in the State of Indiana, whither the society had removed a few years before. It is Exhibit "B," and is printed at length on page 220 of this record. It deals only with adoptive members, who contribute labor only.

ARTICLES OF 1827.

The next articles in point of time are dated March 9, 1827, and were executed in Harmony, Butler County, Pennsylvania, whither the association had removed. (Record, page 221.)

These are not articles of adoption, but seem to constitute an agreement between all the members, reciting for the first time in writing, the purposes of the community, the conditions of membership, and defining the rights, privileges and duties of every individual therein so as to prevent mistake, or disappointment on the one hand and contentions and disagreements on the other. They are of great importance; are continued in force by every subsequent agreement, except in one particular.

The first article is a conveyance to George Rapp and his associates *and their heirs and assigns*, of

> "All our property, real, personal and mixed, whether
> "it be lands and tenements, goods and chattels, money
> "or debts due to us, jointly or severally, in possession
> "or in remainder, or in reversions, or in expectancy,

"whatsoever or wheresoever, without evasion or quali-
"fication, or reserve, as a free gift or donation, for the
"benefit and use of the said association or community."

The trustees took title to themselves, their heirs and assigns, but upon a contemporaneous express trust for the society, subject also to the right of withdrawal of property, which each member reserved to himself, as appears in Article 6.

That article is in almost the same terms as Article 5 of 1805.

By Article 6 it is expressly agreed that in case of withdrawal from the association, the said George Rapp and his associates who held the titles (subject to the trust) would refund to the withdrawing member the value of all property without interest, which he may have brought into the community in compliance with the first article of the agreement.

It is thus apparent:

A. That thus far every member retained such ownership and control of his contributed property as enabled him to withdraw it, or its value, when he left the society, without interest. The same then ceased to be a perpetual free gift but became at the will of the withdrawing member, subject to purchase by the trustees.

B. That the trust properties were held in fee simple by the trustees, but were subjected by the articles to a trust for the benefit and use of the community, and subject also to the right of reclamation aforesaid.

George Rapp and his associates took vested estates in fee simple, determinable first: upon the failure of the trusts, in favor of all the members in the proportion of their contributions; and sec-

ond: determinable as respects individuals withdrawing, to the extent of the contributions of such withdrawing contributors.

The articles of 1827 (Exhibit "C," Record, page 221), are repeated here at length for more convenient reference:

"WHEREAS, By the favor of Divine Providence, an as-"sociation, or community, has been formed by George "Rapp and many others, upon the basis of Christian Fel-"lowship, the principles of which being faithfully derived "from the sacred Scriptures, include the government of "the patriarchal age, united to the community of prop-"erty adopted in the days of the apostles, and wherein "the single object sought is to approximate, so far as "human imperfection may allow, to the fulfillment of "the will of God, by the exercises of those affections, and "the practice of those virtues which are essential to the "happiness of man in time and throughout eternity:

"AND WHEREAS, It is necessary to the good order and "well-being of said association that the condition of "membership should be clearly understood, and that the "rights and privileges and duties of every individual "therein should be so defined as to prevent mistake or "disappointment on the one hand, and contention or dis-"agreement on the other:

"*Therefore*, Be it known to all whom it may concern: "That we, the undersigned, citizens of Beaver County, "in the Commonwealth of Pennsylvania, do severally "and distinctly, each for himself, covenant, grant, and "agree to and with the said George Rapp and his asso-"ciates, as follows, to wit:

"ARTICLE 1. We, the undersigned, for ourselves, our "heirs, executors and administrators, do hereby give, "grant and forever convey to the said George Rapp and "his associates, and their heirs and assigns, all our prop-"erty, real, personal and mixed, whether it be lands and "tenements, goods and chattels, money or debts due to "us, jointly or severally, in possession or in remainder "or in revision, or in expectancy, whatsoever or where-

"soever, without evasion, or qualification, or reserve, as "a free gift or donation, for the benefit and use of the "said association or community; and we do hereby bind "ourselves, our heirs, executors and administrators, to "all such other acts as may be necessary to vest a perfect "title to the same in the said association, and to place "the said property at the full disposal of the superintend-"ents of the said community without delay.

"ARTICLE 2. We do further covenant and agree to "and with the said George Rapp and his associates, that "we will severally submit faithfully to the laws and regu-"lations of the said community, and will at all times "manifest a cheerful and ready obedience toward those "who are or may be appointed as superintendents "thereof, holding ourselves bound to promote the inter-"ests and welfare of the said community, not only by the "labor of our own hands, but also by that of our chil-"dren, or families and others who now are or hereafter "may be under our control.

"ARTICLE 3. If contrary to our expectations, it "should so happen that we could not render the faithful "obedience aforesaid, and should be induced, from that "or any other cause to withdraw from the said associa-"tion, then and in such case, we do expressly covenant "and agree to and with the said George Rapp and his "associates, that we will never claim or demand, either "for ourselves, our children, or for any one belonging "to us, directly or indirectly, any compensation, wages "or reward whatever, for our or their labor or services "rendered to the said community, or to any member "thereof; but whatever we or our families jointly or sev-"erally shall or may do, all shall be held and considered "as a voluntary service for our brethren.

"ARTICLE 4. In consideration of the premises, the "said George Rapp, and his associates, do by these pres-"ents, adopt the undersigned, jointly and severally, as "members of the said community, whereby each of them "obtains the privilege of being present at every religious "meeting, and of receiving, not only for themselves, but "also for their children and families, all such instructions "in church and school as may be reasonably required, "both for their temporal good and for their eternal fe-"licity.

"ARTICLE 5. The said George Rapp, and his associ-"ates, further agree to supply the undersigned severally "with all the necessaries of life, as clothing, meat, drink, "lodging, &c., for themselves and their families; and this "provision is not only limited to their days of health and "strength, but when any of them shall become sick, in-"firm, or otherwise unfit for labor, together with such "medicine, care and attendance and consolation as their "situation may reasonably demand. And if at any time "after they have become members of the association, the "father or mother of a family should die or be otherwise "separated from the community, and shall leave their "family behind, such family shall not be left orphans or "destitute, but shall partake of the same rights or main-"tenance as before, so long as they remain in the associa-"tion, as well in sickness as in health, and to such extent "as their circumstances may require.

"ARTICLE 6. And if it should happen as above men-"tioned, that any of the undersigned should violate his "or her agreement, and would or could not submit to "the laws and regulations of the church or community, "and for that or any other reason, should withdraw from "the association, then the said George Rapp, and his as-"sociates, agree to refund to him or them the value of all "such property, without interest, as he or they may have "brought into the community in compliance with the "first article of this agreement, and the said value to be "refunded in one, two or three annual installments, as "the said George Rapp and his associates shall deter-"mine. And if the person or persons so withdrawing "themselves were poor, and brought nothing into the "community, yet if they depart openly and regularly, "they shall receive a donation in money, according to "the length of their stay, and to their conduct, and to "such an amount as their necessities may require, in the "judgment of the superintendents of the association."

It seems to be clear that so far this condition of rights and property existed:

A. In the event of withdrawal of members each would have restitution of his contributed property.

B. In the event of a voluntary or other dissolution of the society, or of a failure of the trusts for any good and legal cause, the corpus of the trust estates would be distributed to the contributors *as* contributors, and not as donees, on the basis and in the proportions of their individual contributions of property.

II.

By the Articles of 1836, the owners of this right of restitution conveyed to all the members of the society in equal shares, and to all future members all their individual rights of restitution which they then had, and described the same as a joint and indivisible stock, and impressed the property with a trust for the benefit and use of the society.

In 1836 the members of the society, each having such right, in varying amounts, proportioned on his general contributions, agreed with each other:

(1) That the property, then in the hands of trustees, upon the trusts aforesaid, should no longer be held subject to re-clamation upon the basis of original contribution, but that the whole aggregate should become a common fund, in which each member should be equally interested, as fully as though all the property had originally been contributed equally. When any of the contingencies happened which would defeat the trust, the distribution of the property therefore would be made *equally* among all members, and not on the old basis and proportion of contributions made.

(2) That this was an agreement between individuals competent so to contract, and who did so contract upon sufficient consideration.

(3) That thenceforth the members as individuals were equal instead of unequal owners, subject only to the trusts, and each had the same right of reversion equally, as each before had in unequal proportions.

(4) That as such equal owners they impressed upon the joint property the same trust which had previously existed for the benefit and use of the society.

(5) That they were therefore as individuals, donors of the corpus of the trust properties; the society as a society as the donees and the members as members, had no relation whatever as beneficiaries; but their only relation was as donors in common with all other members in the event of reversion upon failure of the trust.

(6) And this contract was so drawn as to include in the *corpus* of the trust, all future contributions, accretions and accumulations, and to admit as donors thereof all future admitted members.

As we cannot well condense the articles of 1836, we print it in full, as it appears in the record (page 224):

"WHEREAS, The Harmony Society, consisting of "George Rapp and many others, now established in the "town of Economy, in Beaver County, Pennsylvania, did, "on the 9th of March, 1827, enter into certain articles of "association, of which the 6th in number, is as follows, "viz.:

"And if it would so happen as above mentioned, that "any of the undersigned should violate his or their agree-"ment, and would, or could not, submit to the laws and

"regulations of the church or community, and for that or "any other cause should withdraw from the association, "then the George Rapp and his associates agree to refund "to him or them the value of all such property as he or "they may have brought into the community, in com- "pliance with the first article of this agreement, the said "value to be refunded without interest, in one, two or "three annual installments, as the said George Rapp and "his associates shall determine.

"And if any person or persons so withdrawing them- "selves were poor, and brought nothing into the com- "munity, yet if they depart openly and regularly, they "shall receive a donation in money, according to the "length of their stay and to their conduct, and to such "amount as their necessities may require in the judgment "of the superintendents of the association.

"AND WHEREAS, The provisions of the said 6th arti- "cle, though assented to at the time, manifestly depart "from the great principle of a community of goods and "may tend to foster and perpetuate a feeling of inequality "at variance with the true spirit and objects of the as- "sociation:

AND WHEREAS, The principle of restoration of prop- "erty, besides its pernicious tendency, is one which cannot "now be enforced with uniformity and fairness, inasmuch "as the members of the association, in the year 1818, "under a solemn conviction of the truth of what is above "recited, did destroy all record and memorial of the re- "spective contributions up to that time:

AND WHEREAS, Continued happiness and prosperity of "the association, a more intimate knowledge of each "other, have removed from the minds of all members the "least apprehension of injustice and bad faith:

"*Now, Therefore,* Be it known by these presents, that "the undersigned, with a view to carry out fully the great "principles of our union, and in consideration of the bene- "fits to be derived therefrom, do hereby solemnly enter "into covenants, and agree with each other as follows:

"1st. The said 6th article is entirely annulled and "made void, as if it had never existed; all others remain "in full force as heretobefore.

"2nd. All the property of the society, real, personal "and mixed, in law or equity, and howsoever, contributed "or acquired shall be deemed now and forever joint and

"indivisible stock. Each individual is to be considered "to have finally and irrevocably parted with all his for- "mer contributions, whether in land, goods, money or "labor; and the same rule shall apply to all future con- "tributions whatever they may be.

"3rd. Should any individual withdraw from the so- "ciety, or depart this life, neither he, in the one case, nor "his representatives in the other, shall be entitled to de- "mand an account of said contributions, whether in land, "goods, money or labor, or to claim anything from the "society as matter of right. But it shall be left altogether "to the discretion of the superintendent to decide whether "any, and if any, what allowance shall be made to such "member, or his representatives as a donation.

"Invoking the blessing of God on this sacrifice of all "narrow and selfish feelings to the true purposes of the "association and to the advancement of our own per- "manent prosperity and happiness, we have signed the "foregoing instrument, and affixed thereunto our re- "spective seals, at Economy, this 31st day of October, "1836."

There then stand clearly and distinctly three classes:

III.

First. Those who own the "joint and indivisible stock" in equal shares.

The sole condition of their ownership is membership in the society.

Second. Those owners create a trust for the use and benefit of the society, and, as such, consent that their joint and indivisible stock shall constitute the corpus of the trust property now held by trustees.

Third. The Harmony Society is the sole beneficiary as an organized community.

The members of the society are not beneficiaries; they are always changing; they have no place in the deeds or in the terms of the trust as beneficiaries.

So long as the trusts are in force, the society alone has the benefit of the trust property; when they cease to be in force the properties cannot go to the members as surviving members exclusively, but as we contend, only to them in common with all the other owners, members of the society since 1836, dying in the society, their heirs and legal representatives, as owners of this "joint and indivisible stock," and as givers of the same to the trustees, upon the recited trusts.

THE SUBSEQUENT ARTICLES.

The subsequent articles between the members in no wise affect the status of the membership, their relation to the properties of the society, the creation of the terms of the trust, or any of the conclusions we have attempted to draw from the preceding articles. We need only make in this stage of our argument very brief reference to them.

ARTICLES OF 1847.

The first of these subsequent articles is dated in the year 1847. (See record page 225.)

George Rapp had always been the sole patriarch, and the recognized despotic ruler of the members, by laws and regulations of his own enacting, with powers of admission, expulsion, punishment; and was the absolute controller and dispenser of the properties and of accretions from labor of members.

When his death occured in 1847, it became necessary to vest these extreme powers in some successor, without change as to their extent and powers of enforcement. The articles of 1847 did create and nominate a Board of Elders of nine members, who were self-perpetuating, the board alone having the power to fill all future vacancies. A Board of Trustees consisting of two members of the Board of Elders, also named, was also constituted. The eldership had the power to fill vacancies in the trusteeship. As we will hereafter show, these boards alone have the enjoyment, power and control of the property of the society; the lay or unofficial members have only the portion of unpaid servitude and labor and the sole compensation to them is their lodging and maintenance.

Instead of a single patriarch, the articles of 1847 substitute a dual patriarchy consisting of the two boards.

These articles also expressly recognize, re-establish and continue the preceding articles of agreement of March 9th, 1827 (excepting the restoration clause, article 6), and of October 31st, 1836; and they are to be read into the articles of 1847.

The sixth clause declares the trust upon which property is to be held. To that clause we shall refer hereafter more fully.

Another clause provides that subscribing this agreement of 1847, is a condition imposed upon new members, and such subscription is to be evidence of their membership, and of the rights acquired by, and the duties imposed upon, them.

ARTICLES OF 1890.

The purpose of these articles, dated July 31st, 1890 (record page 228), are: (a) To recognize, approve, re-affirm and continue the last recited article of 1847, which, as we have shown, had re-affirmed the precedent articles of 1827 and 1836. (b) To ratify and confirm appointments by the Board of Elders of successors to deceased members of the Board of Elders, and of the Board of Trustees, and confirming their acts in those capacities.

Nothing in these articles vary or affect any of the provisions of any precedent agreement, and do not in anywise have bearing upon our present contentions.

ARTICLES OF 1892.

These articles are dated December , 1892. The purposes of these articles (Record, page 232) are:

(*a*) To confirm the articles of 1847; (*b*) to recite the names of the then members (thirty-six in number); (*c*) conditions imposed upon new members; (*d*) declaring the names of existing Boards of Elders and of trustees; (*e*) enlarging the powers of the trustees to borrow money on mortgage loans; (*f*) to authorize either of the trustees to sign the joint names of the trustees in the execution of any of the powers of the trustees.

ARTICLES OF 1894.

These articles dated April 11th, 1894 (record page 106), while wholly in excess of any power or right existent in the members—have no relevancy or bearing upon the present topics of discussion.

Its main intent is to authorize the trustees to divest themselves of their duties and obligations, and to transfer them and all the trust

properties for a false consideration to a capitalistic Pennsylvania corporation organized for profit.

We have shown:

First. The ownership of the property which went into the trusts for the society, and who those owners were.

Second. That they created trusts of their own property for the use and benefit of the society.

Third. That those trusts were created for the society as a community, and not for the benefit of surviving members.

Fourth. And that the trustees hold the titles by deeds and instruments in fee simple.

IV.

The Titles of Trustees, and Declarations of Trusts.

First. Article 1 of the articles of 1805 (Record, page 218), contains the grant of the property of admitted members to George Rapp and his associates, as trustees "for the use and benefit of the community."

Second. The Articles of 1821 (Record, page 220), gives labor of members unconditionally and without other recompense or reward, other than lodging, maintenance, etc., to the common fund.

Third. The articles of 1827 (Record, page 221), give property of members in possession or expectancy, reversion or remainder to George Rapp and his associates, their heirs and assigns, for the benefit of the community, reserving right of restitution.

Fourth. The articles of 1836 repeals the 6th clause of the articles of 1827, reserving to members the right of restitution.

Fifth. The articles of 1847 (Record, page 225) provides as follows, viz.:

> "ARTICLE 6. It is hereby distinctly and absolutely "declared and provided that all the property, real, personal "and mixed, which now or hereafter shall be held or ac- "quired by any trustee or trustees or person under them, "is and shall be deemed the common property of said "society, and each trustee now or hereafter appointed, "hereby disclaims all personal interest in the present re- "sources and future earnings of the society, other than "that of a member thereof, according to the articles of "association hereby re-established and continued, and ac- "cording to the present agreement."

Sixth. The master in his report (Record, page 65) finds as follows:

> "Prior to his death in 1834, Frederick Rapp, a mem- "ber of the society, had been the business agent of the so- "ciety, transacting its external business. After his death, "the members of the society, on July 5th, 1834, executed "a power of attorney to George Rapp (Exhibit No. 85 "in evidence) constituting him general agent of the so- "ciety in all its temporal affairs, with power to appoint "agents and substitutes under him. Under this power, he, "on the same day, appointed Romulus L. Baker and Jacob

"Henrici his substitutes. This power of attorney was "signed by four hundred and two members of the associa- "tion, and, with the substitution, and not including the "signatures, is as follows:

"Know all men by these presents: WHEREAS, Fred- "erick Rapp, of Economy, in Beaver County, State of "Pennsylvania, recently deceased, was for a series of "years the agent in temporal affairs of the Harmonie So- "ciety, carrying on in his own name all the external busi- "ness of said society, and taking to himself the titles to "real estate, as well as the evidence of claims arising out "of the various transactions of said society;"

"AND WHEREAS, By an instrument dated the 20th "July, 1825 u,nder the hand and seal of said Frederick, "he solemnly and irrevocably declared that all the prop- "erty, real, personal and mixed, which then was, or here- "after might be in his possession or enjoyment, or the "title to which he then held or might hereafter hold, was "and should be considered the property of the said society, "in which he, the said Frederick, had no absolute interest "whatever;

"AND WHEREAS, The lamented death of the said "Frederick Rapp renders it indispensable that a new agent "should be appointed, by whom the temporal affairs of "the society may continue to be managed in a mode which "has proved convenient and satisfactory;

"*Now, Therefore,* Be it known that we the under- "signed, constituting said Harmonie Society, do hereby "nominate and appoint George Rapp, of Economy, in the "County of Beaver, the general agent of said society in all "its temporal affairs.

"The powers intended to be conferred on the said "George Rapp are hereby declared to be as follows, that "is to say:

"1. To ask for, demand and receive from each and "every bank or other incorporated company, partnership, "or individual person or persons, the amount which may "be due therefrom, in the way of principal, interest or "dividend to the said Harmonie Society, or to Frederick "Rapp, whether the same be evidenced by judgment. "mortgage, bond, certificate of stock, note, bill of ex- "change, deposit of money, book account, verbal promise, "sale or barter, loan of money, or a rise in any other man-

"ner whatsoever the check, order, receipt, acquaintance "or release of the said George Rapp to be as effectual as if "executed by all and each of us, or as if it had been exe- "cuted by the said Frederick Rapp in his life time.

"2. To execute and receive all deeds and convey- "ances, in fee simple or otherwise, on behalf of the society, "whether the title thereto stand in the name of the society, "or of Frederick Rapp, or of George Rapp and associates. "The act of the said George Rapp relative thereto to be "as valid and sufficient as if executed by us or by the said "Frederick Rapp in his life time.

"3. To carry on, by himself or through the agents "whom he is hereinafter authorized to appoint, all the "dealings and traffic of said society of every description.

"4. To constitute and appoint an agent or agents under "him as he may deem advisable, imparting to such sub- "stitute or substitutes, should he think fit, the whole or "any portion of the authority hereby conferred on him- "self. He may also, at his pleasure, revoke such instru- "ment of substitution whenever he may think such revo- "cation called for by the interests of the society.

"5. It is distinctly understood that in accepting and "acting under this power, the said George Rapp disclaims "all personal interest, other than that of a member of "said society, in the present resources or future earn- "ings of the society, in conformity with the principles "and terms upon which the Harmonie Society was origi- "nally founded, as fully and effectually as was done by "the late Frederick Rapp, in the instrument already "averred to, dated 20th July, 1825, the terms of which in- "strument the said George Rapp hereby adopts for him- "self, and repeats in every particular.

"In witness whereof the undersigned members of the "Harmonie Society, who constitute said society, have "hereunto set their hands and seals at Economy, in "Beaver County, this fifth day of July, in the year of our "Lord, eighteen hundred and thirty-four."

(Signatures.)

"By virtue of the authority expressed in the fourth "article of the foregoing power of attorney I do appoint "and substitute in my place and stead, Romulus L. Baker "and Jacob Henrici, of Economy, Beaver County, Penn- "sylvania, to act as general agents of the Harmonie So-

"ciety aforesaid, jointly or severally in my name, and for "the use of the said society to do and perform all acts and "things which as the general agent of said society I am "authorized to do. It being distinctly understood, how- "ever that in accepting and performing the office and "business of general agents of the said society the said "R. L. Baker and Jacob Henrici shall neither acquire nor "claim any personal interest in the present resources or "future earnings of the said society other than that of a "member of the said society, agreeably to the plans and "terms of association, but shall be considered as exercising "the same trust mentioned in a declaration of trust signed "by Frederick Rapp on the 20th day of July, 1825, and "referred to in the foregoing power of attorney to George "Rapp.

"Witness my hand and seal this fifth day of July, A. D. "eighteen hundred and thirty-four.

"GEORGE RAPP." [SEAL]

Seventh. The articles of 1847 (Record, page 225), provide:

"Article 6. It is hereby distinctly and absolutely "declared and provided that all the property, real, per- "sonal and mixed, which now or hereafter shall be held "or acquired by any trustee or trustees or person under "them, is and shall be deemed the common property of "said society, and each trustee now or hereafter ap- "pointed hereby disclaims all personal interest in the "present resources and future earnings of the society, "other than that of a member thereof, according to the "articles of association hereby re-established and con- "tinued, and according to the present government."

Eighth. The subsequent articles of 1890, 1892 and 1894 all recognize the trust character and purposes of the trustees under which the trust properties of the society were held, as by reference thereto will more fully appear. (Record, page .)

V.

These trusts have been recognized by the Courts below and by all Courts in which the affairs of the society have been under consideration, as express trusts for the benefit of the society as a society.

Judge Acheson, in the Circuit Court below, and Justice Gray in the Court of Appeals (quoting and adopting his language) recognized this express trust. We quote:

> "It is not necessary, nor would it be proper, for the "Court to express any opinion as to what would be the "legal status and the ultimate disposition of the prop- "erty of the Harmony Society were its existence ter- "minated by the death of all its members, or were a dis- "solution of the society otherwise effected. No such "questions are before us. We are not dealing with the "assets of a defunct or dissolved association."

VI.

The immediate and underlying question is, therefore, to whom does the corpus of the trust property go, in the event of the defeat of the trusts from any cause whatever?

It must go either:

1. To the owners of the property who subjected it to the trusts as owners or donors, living, and to the heirs and legal representatives of those of them who are dead, share and share alike, by way of resulting trust; or

2. To the surviving members of the society as joint tenants with right of survivorship, or by way of tontine; or

3. It must escheat to the state.

AS TO ESCHEAT.

We respectfully submit that this property in the hypothesis mentioned does not escheat.

Blackstone says that the law of escheat "is founded upon

> "this single principle that the blood of the person "seized in fee simple is by some means or other utterly "extinct and gone; and since none can inherit his estate "but such as are of his blood and consanguinity, it fol- "lows as a regular consequence that when such blood is "extinct, the inheritance must fail."

The Pennsylvania Statute of May 2, 1889, P. L. 66 (Purdon's Digest, page 798, pl. 1), provides:

> "From after the publication of this Act, if any person "whom at the time of his death, was seized or possessed "of any real or personal estate within this Common- "wealth, has died or *shall die intestate, without heirs or "known kindred* * * * * such esate of whatsoever kind "the same may be, whether legal or equitable, or whether "the same was held by the said person in severalty, or as "tenant in common, co-tenant, joint tenant, or in part- "nership, with any other person or persons, shall es- "cheat. * * "

As this society is not incorporated, but is unincorporated, and as it is not organized for any religious, charitable, literary or scientific purpose, and can hold no property, it cannot be brought within the statutes of Pennsylvania, which relates to the disposition of trust estates by way of escheat.

In the statutes relating to religious, charitable, scientific and educational purposes, an escheat is declared only when corporations for such purposes have exceeded the limitations of their powers as defined by those statutes. A corporation can of course have no next of kin; it possesses no inheritable blood. But an unincorporated association preserves the individuality of its members and their inheritable qualities. And there is no escheat, as long as there are heirs to take.

The trust properties cannot be considered *bona vacantia*, because the original owners of the trust properties under the articles of 1836 have the reversionary right to them, upon the failure of the trusts, and where such original owners are dead then such reversionary right passes to their heirs, under the intestate laws of Pennsylvania.

In short, escheat is a forfeiture which never operates so long as persons may be found who are entitled thereto lineally, or collaterally, within the meaning of the term "next of kin."

The real question then lies between all those who, as owners of the trust properties created the trusts, on the one hand, and the surviving members as such survivors on the other, and there is an irreconcilable conflict between the two.

The present membership has dwindled to eight persons—less than enough to fill the Board of Elders; the Board of Trustees has been reduced to one person, John S. Duss. The Board of Elders have no members to govern, control or direct. The Board of Elders consists of two men and six women, Duss and his wife counting for two. All the others are aged or ignorant. Practically John S. Duss is the last survivor, and he claims the ownership of this vast estate as such survivor.

And the appellees, who are seeking to possess themselves of the property, necessarily contend that the scheme of the society and of the trusts contemplate and create a joint tenancy with the right of survivorship, or a system of tontine, which excludes all but living members, and casts the estate upon the survivor. And in this they are wrong.

NOT A JOINT TENANCY:

It is almost inconceivable that the creators of this property and of this trust ever dreamed that their property was to be diverted from their heirs in the event of the dissolution of the society; or that they were constituting an estate which in the distant future, with all its accumulations and accretions, the profits of their labor, otherwise unpaid for, was to vest in fee simple in some last survivor who, it may be, might be absolutely removed in sympathy with the objects of the society, and whom it was impossible for them to know. Is it possible to conjecture, in the absence of express language, that the utter abandonment of property, of the power of individual accumulation, of their hard labor and toil, their deprivation of all the individual enjoyments, their utter subjection to the tyrannical will of despotic patriarchy, were all meant for the future enrichment of some survivor, who perchance became such survivor by contrivance to defeat the very life of the society, to come into his inheritance like an impatient heir—or that the graveyard in which repose the remains of their ancestors, and which was intended to contain theirs, was to pass into the possession and ownership of some distant last survivor, rather than to their own direct heirs, when the purposes of the trust had failed?

If such was the thought, why not have said so? There is not one word in any of the articles of the society, nor in any declaration of trust, nor in any deed of title, which contemplated the extinction of the society, at any future time; or an abandonment of its principles and purposes, nor makes any provision for a remainder over upon the failure of the trusts, or gives any indication of any intent, express or implied, to create a survivorship or scheme of tontine.

Either joint tenacy with right of survivorship, or tontine, must be the result of *express agreement*. They cannot be presumed by construction.

Examine each and every one of the articles of this society, and so far from finding any provision for the ownership of the property in case of illegality or dissolution, you will find nothing except the contemplation of an enduring and never-ending existence. No provision is made for a termination of existence.

Survivorship is under the ban of the law.

We quote from the Act of 5th of March, 1812, Section 1, 5th Smith, 395:

> "If partition be not made between joint tenants, "whether they be such as might have been compelled "to make partition or not, or whatever kind the estate "or thing holden or possessed be, the parts of those "who die first will not accrue to the survivors, but shall "descend or pass by devise and shall be subject to debts, "charges, curtesy or dower or transmissible to execu- "tor or executors, and be considered to every other in- "tent and purpose in the same manner as if such "deceased joint tenants had been tenants in common; "provided always, that nothing in this Act shall be taken "to affect any trust estate."

Only trustees take by survivorship, and they alone are excepted.

There is no arrangement in the articles that the last survivor is to receive the whole.

The essence of tontineism consists in reserving for the last survivor among several investors the profits realized from their common investments. And this demands express written covenant.

Neither survivorship nor tontine can be presumed.

We might concede that while the society exists consistently with its principles, and in good faith, and in accordance with the law, it may hold and enjoy the common property; yet when it ceases to exist, and the time for distribution comes, the members do not take the property in severalty as survivors, but distribution is to be made equally among all the members signatories of the articles of 1836, those living, and the heirs and next of kin among those dead.

To hold otherwise is to introduce into the articles provisions not to be found there, and to construe them, so that Duss, potentially being the last survivor, takes those vast estates as his own; and he, who came into the society in 1890, *a poor man—who never contributed one dollar to the funds of the society*—will find himself enriched of the estate of those who for many years contributed to the wealth of the society by hard labor, and who died in the society in full membership.

Such a construction has been acted upon by him. He has admitted no new members since 1892. He has depleted the funds of the society in the purchase (by paying large sums) of the interests of seventeen members in full health and vigor, solely with a view to hasten this survivorship. He has yielded to the temptation described by Judge Irwin, in his opinion in the Nachtrieb case.

That learned jurist, who had before him Henrici, Baker and all the old members of the society, and was made thoroughly acquainted with the articles of 1836, and the preceding articles, with the faith, beliefs and purposes of the society, held that it was not then and "*had not been determined* that ultimately all the prop-"erty of the society is to vest in one or a few of its members."

Commenting upon a construction which might in the future be made that survivorship existed, he says:

> "*Unless human nature should be proof against the* "*strong temptation to hasten such a result*, the dissolv-"ing element would be always at work. The unwritten "rules of the society, inconsistent with natural rights

"and liberties as seen beyond its own limits, the death of "its members, the expulsion of others with or without "cause and the prohibition of marriage, and the lawful "intercourse of the married, would in time so reduce "the community in numbers as to make it expedient and "proper in the opinion of the survivors to dissolve and "divide the possessions. It is not meant to infer that "any such ulterior result is projected, or that in view "of it, it in any way influenced the proceedings against "the plaintiff (Nachtrieb); it is noticed simply for the "purpose of glancing at an undisputable and imputed "right which will attach to each member of the commu- "nity at its dissolution; an event it may be near or re- "mote; but which not unreasonably, such member may "think may happen in his life time, and to value accord- "ingly, with its disadvantages if any, the privileges of "membership."

The case of Kane *vs.* Gibbony, 101 U. S., 362, applies with full force. In that case there was a bequest to the Bishop of Wheeling, or to his successor in said dignity, upon a trust that in the event the testatrix should afterwards become a member of any of the religious communities attached to the Roman Catholic Church, and remain so at the time of her death, the said Wheelan, Bishop, and his successor in said dignity was constituted a trustee for the benefit of the community of which the testatrix might be a member. The said property or money to be expended by the said trustee for the use and benefit of said community. The testatrix became a member of the community known as the Sisters of St. Joseph, which was unincorporated.

Justice Strong held, among other things, as follows:

"That is an *unincorporated association*, and it is the "association as such and not the individual members "who composed it when the testatrix died which is de- "clared to be the beneficiary. * * * Its members must "be constantly changing and it must always be uncer- "tain who may be its members at any given time. No "member can assert claim on individual benefits from "the bequest, or assert that she is a *cestui que* trust; and "the community having no *legal* existence, can never

"have *standing in court to call a trustee to account.* "This bequest is, therefore, plainly invalid unless it can "be supported as a charity, and it is far from evident "that it is a gift of charitable uses. It looks more like "private bounty. Charity is generally defined as a gift "for a public use. Such is its legal meaning, and here "the beneficial interest is given to a religious commu- "nity, but not declared to be for religious uses. There "is nothing in the will to show that aid to the poor or aid "to learning, or aid to religious or to any humane ob- "ject was intended."

In that case there was no remainder over; the gift was to the community and not to the members, and the corpus of the gift was held to revert to the testatrix's heirs.

It was not thought in that case that the estates were still to be held to vest in the last survivor of the community.

And so, in the case of Cummack *vs.* Edwards (The Law Times, 1 Ch. 386),

"Syllabus—In 1810 a society was established to raise "a fund, by the subscriptions, fines and forfeitures of its "members, to provide annuities for the widows of its "members. In 1830 the rules were revised, and the so- "ciety conformed to the provisions of the friendly "societies—Act of 1829, but the object of the society "was not in any way altered. In 1848, Edwards be- "came a member and remained a member until 1878, "when he died a widower. Edwards was the last surviv- "ing member. The last honorary member who, on join- "ing, disclaimed all benefit of the society for his widow, "died in 1879. The last annuitant died in 1892.

"The legal personal representative of Edwards, hav- "ing claimed the unexpended fund of the society "amounting to 1750 pounds;—

"Held—That the society was not a charitable insti- "tution to which the doctrine of cy-pres could be ap- "plied, and that on this point the fact that there were "honorary members whose donations were applicable

"for the benefit of widows of members made no differ-
"ence; that the representatives of Edwards, surviving
"member, were not entitled to the funds, neither was the
"Crown entitled to them, as *boni vacantia*, but that
"there was a resulting trust in favor of the members of
"the society, from time to time, of their respective, legal,
"personal representatives, in shares in proportion to the
"amounts contributed by each member to the funds of
"the society."

This was an action by the trustees of a fund, to obtain the direction of the Court.

In March, 1810, a society called the Nelston Equitable Annuitant Society was established, for the purpose of raising from time to time, by the subscriptions of the members, and fines and forfeitures, a stock or fund, for the relief of widows of the deceased members of that society. By Rule 16, these funds were to form the capital stock of the society, to be invested by the Treasurer in the names of the trustees for the time being, upon approval of a majority of the managing committee or by a majority of the society, and by rule 35, it was provided that on the death of any member, after having been admitted four years and having paid his annual contributions and other payments required by the rules, and conformed to the same in all respects, his widow should be entitled to such an annuity as was set forth in the table for that purpose provided, so long as she should continue a widow.

Edwards was an ordinary member, and died in 1878, and at the time of his death was a widower, and was the last surviving ordinary member. There was only one honorary member, who, on joining disclaimed any benefit in favor of his widow.

There was no provision in the rules as to the ultimate disposition of any unexpended funds after paying all the annuities. The last annuitant died in 1892.

The legal personal representative of Edwards claimed the un-

expended funds, and the surviving trustees instituted this action against that representative, and also the Attorney General.

Chitty, J., after reciting the facts in the case, after holding that the claim of the Attorney General that the funds might be applied cy-pres, as impossible, says as follows:

> "The claims are, first, the representative of the sur-"viving ordinary members; secondly, the Attorney "General on behalf of the Crown; and thirdly, the rep-"resentative of the deceased member appointed to rep-"resent for the purpose of this hearing, all the deceased "ordinary members. As a body the claim of the repre-"sentative of the last surviving member may be disposed "of in a few words. The society was not a tontine so-"ciety, and there is no ground for saying that the fund "belonged in equity to the last survivor. There is noth-"ing in the rules, or in any principle of equity, applicable "to the case on which this claim can be raised. * * * "The contention for the Attorney General was that the "funds were *bona vacantia*, and that the Crown was en-"titled to them by virtue of its prerogative. It is in "virtue of this prerogative right that the Crown takes "the personal estate of a man who, being a bastard, dies "intestate and without leaving issue. Such a bastard "can have no next of kin. The Crown's right attaches "on the proof of the bastardy, and no lawful issue of the "bastard—subject, of course, to the right of any widow "he may leave. But in case of the death, intestate, of "the person born in wedlock, the Crown does not take "merely because there is difficulty in finding the next "of kin. An inquiry is directed, and sometimes re-"peated, to find the next of kin, and it is not until every "reasonable step by advertisement and otherwise, has "been taken that the fund is ordered paid to the Crown. "The mere fact that there will be great expense and dif-"ficulty in ascertaining the equitable owner of a fund is "not, of itself, sufficient ground for declaring the Crown "entitled. The claim of the person appointed to rep-"resent the deceased members generally is founded "upon the doctrine of resulting trusts. Where a man "provides a fund by way of trust, for payment of a speci-

"fied annuity to his widow during her life, and makes "no further declaration of trust effecting the fund, the "beneficial interest in the fund or so much of it as is not "required for payment of the annuity, results to himself. "The same doctrine would apply to the case of several "persons agreeing to provide and providing such an- "nuities for their widows; there would be an ultimate "trust in their favor, when the purposes of the fund "would come to an end. Nor can I see how any differ- "ence could justly be made, by reason of their raising "by common agreement such a fund, in different but "prescribed proportions among themselves. Inasmuch "then, as all the purposes for which the fund of the so- "ciety was raised by the contributions of the members, "have been exhausted, and there is no indication to be "found in the rules as to what was to be done with the "funds when the specified purposes were worked out, I " am constrained to hold, according to the principles of "equity, that the doctrine of resulting trust applies. It "is immaterial that no actual declaration of trust was "made by the trustees in pursuance of rule 17 of the "society. * * * I therefore make a declaration that in "the events which have happened the funds are subject "to a resulting trust in favor of the ordinary members "of the society from time to time, or their respective le- "gal representatives, in share in proportion to the "amounts contributed by each ordinary member to the "funds of the society." * * *

The case just cited bears fully upon the case at bar. In our case the plaintiff's ancestors, together with others dying in the society since 1836, and the present members, are equally interested in the "joint and indivisible stock," under the articles of 1836, and as such devoted it in trust as donors for purposes which have failed.

The chancellor in that case could find no basis for an award to the last survivor.

We submit that wherever this trust estate may ultimately go, it cannot go to the last surviving members or member.

VII.

The Estate Base or Determinable Fees.

The estates which the trustees have taken in fee, qualified by their declarations of trusts, upon which they were so granted, are determinable, base, or qualified fees, and there is to be read into them, in the construction of them, the provision that when the purposes for which they were so granted have failed, the estates will revert by way of resulting trust to those who granted them living, and to the heirs and legal representatives of those who are dead.

Assuming for the present that the trusts are valid, that the Harmony Society is in law a competent taker, then the grants are in the nature of a base or conditional or determinable fee, and upon the failure of the purpose for which the grant was made or the trusts created by dissolution or otherwise, then the property reverts, by way of resulting trust, to the donors and their heirs or legal representatives.

The grants of the real estate purport to convey a fee simple; the title to the personal estate is absolute.

The trust covering them all is for the use and benefit of the society.

The condition, therefore, is, that when the society reaches the end of its existence, the purpose for which the grant was made and the trust created having failed, the property necessarily reverts to the donors and their heirs or legal representatives.

There is no terminal period fixed for the life of the society; there is no joint tenancy with right of survivorship or tontine scheme for the individual members; the property cannot vest in the trustees

divested of the trust, nor can the fee simple float around without a taker, on the happening of the condition. There is, therefore, no place for it to go, unless it escheats—which it cannot do, so long as there are persons competent to take—except to the donors or their heirs or legal representatives, by way of resulting trust.

The Court sustains the master in holding that the trust is for the society as a society. Therefore, it is not for individual members as members. The society as such is absolutely distinct from its members as such. The latter die and new members are admitted, and none of them at any time have title to the property.

In the event of the dissolution of the society, those who are then members share proportionately, not because they are interested as *grantees*, but because by the articles of 1836, they being equally interested in the "joint and indivisible stock," which comprehends all the property of the society, then possessed or afterwards acquired, as *grantors* or *donors* of the trust property, and *so* share proportionally only by way of reversion, because the grant was conditional upon the life of the society.

We quote the terms of the trusts as given in various articles.

July 20, 1825 (M. R. 142), Frederick Rapp, under his hand and seal,

> "Solemnly and irrevocably declared that all the prop-
> "erty, real, personal and mixed, which then was or here-
> "after might be in his possession or enjoyment, or title
> "to which he held or might hereafter hold, was and
> "should be considered the property of the said society
> "in which he, the said Frederick had no absolute interest
> "whatever."

July 5th, 1834 (M. R. p. 145), George Rapp, in pursuance of authority to appoint agents and trustees under him, given him by article of the same date, executed the following instrument:

"By virtue of the authority in the fourth article of the "foregoing power of attorney, I do appoint and sub- "stitute in my place and stead, Romulus L. Baker and "Jacob Henrici, of Economy, Beaver County, Pennsyl- "vania, to act as general agents of the Harmonie So- "ciety aforesaid, jointly and severally in my name, and "for the use of the said society to do and perform all "acts and things which as the general agent of said so- "ciety, I am authorized to do. It being distinctly under- "stood, however, that in accepting and performing the "office and business of general agents of the said society, "the said R. L. Baker and Jacob Henrici shall neither "acquire nor claim any personal interest in the present "resources or future earnings of the said society other "than that of a member of the said society, agreeably to "the plans and terms of the association, but shall be con- "sidered as exercising the same trust mentioned in a de- "claration of trust signed by Frederick Rapp, on the 30th "day of July, 1825, and referred to in the foregoing "power of attorney to George Rapp.

"Witness my hand and seal this fifth day of July, "A. D. eighteen hundred and thirty-four."

August 12, 1847 (M. R. 150), after providing that the "powers hereby vested in the said trustees shall extend to and embrace all the property of said society, real, personal or mixed, whether standing in the name of the late Frederick Rapp, the said George Rapp or in any other name whatsoever," contains the following:

"ARTICLE 6th. It is hereby distinctly and absolutely "declared and provided that all the property, real, per- "sonal and mixed, which, now or hereafter shall be held "or acquired by any trustee or trustees, or person under "them, is and shall be deemed the common property of "said society, and each trustee now or hereafter appointed "hereby disclaims all personal interest in the present re- "sources and future earnings of the society other than "that of a member thereof, according to the articles of as- "sociation hereby re-established and continued, and ac- "cording to the present agreement."

It will be remembered that the Board of Trustees are also members of the Board of Elders, all of whom must be members of the society.

When the purposes cease, the objects for which they were given no longer exist, the maintenance of the principles contemplated are abandoned, then the grants terminate and the property reverts to the grantors and their heirs.

If, therefore, the system of patriarchal government is abandoned; if the communistic scheme has been subverted and a capitalistic scheme substituted; if the religious beliefs have been departed from; if al lthat made the society distinctive disappears, if it has become a trading community; if it is a transgressor of the laws; if it is insolvent; had gone into a process of liquidation; if it had parted with the control of all its property; if it had abandoned the form of management of even the articles of 1847; if its "joint and indivisible stock" has been perverted into outside adventures, and perverted to the purchase of interests of members; if the trustees have schemed to prevent the admission of new members, to deplete existing membership, to secure survivorship; if after covering its property with mortgages it has made conveyance of every foot of land, every asset, every means of living, without the ownership of a roof to cover the head of one of its members, and taken to itself the shares of a trading corporation, then we confidently say, that the purposes for which the grants were made have entirely ceased and failed, and under the authorities must revert to the original grantors or their heirs.

In the case of Slagel *vs.* Lauer, 148 Pa. St., 236, plaintiff's ancestor conveyed for a money consideration, a strip of land to the Commissioner of Berks County, to and for the use, intent and purposes following—to be forever hereafter unbuilt on, in order to prevent prisoners making escape by reason of contiguous buildings. The jail in 1849 was removed more than one mile from its old location.

The question was whether on the cessation of the use of the land for the purpose of the jail, it reverted to the grantor's heir. And it held it did.

The Court says:

> "It must not be forgotten that such a fee is neverthe-
> "less a fee simple because it may last forever in a man
> "and his heirs, the duration depending upon the con-
> "currence of collateral circumstances which qualify or
> "debase the purity of the grant. 2 Black. Com., page 109.
> "The *qualification must be found in the instrument it-*
> "*self*. * * * * But no especial or technical words are re-
> "quired to establish it. * * * What is needed is that
> "the deed on its face contain a reservation or declare a
> "specific purpose for which the land was conveyed and
> "from which the reservation may be implied. Caton J.,
> "in Adams Co. *vs.* Logan Co., 11 Ill., 336.

The Court then distinguishes certain cases in which the grant was for purposes in which counties usually acquire land.

And on page 244, distinguishes those cases and decisions which relate to the construction of a deed as conveying an estate on *condition subsequent*, and deny that effect to a recital that the grant is upon a certain consideration, or to a collateral covenant—and says: "The purpose here is not recited as part of the consideration, nor is its observance collaterally covenanted. Nor is the estate here granted one upon condition."

Again: "Of course upon the determination of a base fee, the property reverts to the grantor: 2 Black Com. pages 109, 110; without any claim or act on his part where it is determinable by limitation. * * * * In the meanwhile the estate is out of him, and all that remains to him is the mere possibility of reverter: 4 Kent, Comms., page 10. *Yet this mere possibility is capable of transmission* to his grantees, and will pass to them under a conveyance of the reversion.

"Scheets *vs.* Fitzwater, 5 Pa. 126."

We cite also:

Kirk *vs.* King, 3 Barr, 436,
Scheets *vs.* Fitzwater, 5 Barr, 126,
Vail *vs.* Fitzwater, 5 Barr, 126,
Adams *vs.* Logan County, 11 Ill., 336,

Church *vs.* Boland, 155 Mass., 171,
Church *vs.* Manning, 72 Md., 116,
Easterbrook *vs.* Tillinghast, 5 Gray, 17,
Campbell *vs.* City of Kansas, 102 Ill., 326,
Board *vs.* Edson, 18 Ohio, 226,
Gebhardt *vs.* Reeves, 76 Ill., 301.

In the case at bar the deeds are *in presenti*, the purpose and use are distinctly stated, and the conveyances are made as a free gift or donation.

And even if there has been a *consideration*:

"Although the feoffment be made for a consideration, it is the intent that guides the use, and the feoffer expressly declaring a particular estate of the use, it shows that *if he intended to part with the residue he would have declared that intention also.*"

2 Fonblanque Ch. 5, Sec. 4. (Note M.)

"The same principle applies to cases where the whole of the estate is conveyed or devised, but for *particular objects and purposes or on particular trusts.* In all of these cases, if these objects or purposes or trusts by accident or otherwise fail and do not take effect, * * * * then a resulting trust will arise for the benefit of the grantor or devisor and his heirs."

In the case of Reed *vs.* Stauffer, 56 Md., 226, the facts are as follows:

"On the 17th of November, 1808, a lot of ground in "the city of Baltimore was conveyed by deed by one "Howard, for a consideration of 100 pounds, to trustees, "in trust and to and for no other use, intent or purpose "whatever, that it should at all times thereafter be used "as a burial ground or place of deposit for the remains "of the members of the Society of German Baptists, com- "monly called Dunkards, and such other persons as a ma- "jority of the trustees residing," etc., "might think proper "to give permission to be buried therein." In 1875 a bill "in equity was filed by the heirs of the trustees for the

"sale of the lot, on the ground that it had become unsuit-
"able for burial purposes, and that it was necessary and
"would be for the interest and advantage of all the parties
"interested therein that it be sold. The Court said (p.
"253):"

"In no event have the trustees named in the deed of
"1808, their heirs and assigns, or trustees of the Church
"of the German Baptist Brethren or their successors, any
"right to have the lot in question sold and the proceeds
"of such sale distributed among themselves or their
"*cestui que* trust. The deed of 1808 in express terms
"declares the intention of the grantor, in creating the
"estate to part with the use of the property, conveyed for
"the particular purposes set forth in the deed, and for
"no other purpose, and the grantees, by their acceptance
"of that deed, are bound by that intention. The inten-
"tion of the parties to the deed is to be carried into effect
"and accomplished, unless other expressions in the deed
"positively forbid it; or unless that intention violates
"some established principle of law. By the express terms
"of the deed, it was the intention of the parties to it to
"dedicate the lot conveyed to the uses therein specially
"declared; and neither they, their heirs, the *cestui que*
"trust, nor the lot holders have any right to divert it from
"those uses. The fact that a valuable consideration was
"paid for the grant can make no difference. The estate
"conveyed and granted in express and exclusive terms,
"cannot be changed by the amount of the consideration
"paid. Where uses are declared they are to be held as
"correspondent to the consideration. Fonblanque's
"'Equity Book 11,' Sec. 4, Note M, and the authorities
"there cited. * * * * It is manifest that neither the origi-
"nal trustees named in the deed of 1808, nor their heirs,
"nor the lot holders, have any right to have the lot sold,
"and the proceeds of the sale distributed among them or
"any of them. It must be held and used in strict con-
"formity to the terms of the deed by which it was con-
"veyed, and for the uses therein specially declared.
"Should it be diverted from those uses, the terms of the
"deed, the heirs of General Howard, would immediately
"become re-invested with the title to the lot."

In the case of the First Universalist Church *vs.* Borland, 155

Mass., 171; one Clark, in 1854, for an express consideration of $900, conveyed by deed, certain land in the First Universalist Society and their assigns, or so long as the said real estate shall by said society, or its assigns, be devoted to the uses and support of those doctrines of the Christian religion embraced in the confession, etc., and when said real estate shall, by said society or its assigns, be diverted from the uses, intents and purposes aforesaid, into any other intent, uses or purposes aforesaid, then the title of said society or its assigns, in the same, shall forever cease and be forever vested in the following named persons. (Then follows a list of persons.)

> "Where there is an invalid limitation over, the general "rule is that the preceding estate is to stand unaffected "by the void limitation. The estate becomes vested in "the first taker, according to the terms upon which it "was granted or devised. * * * * The grant to the plaintiff was to have and to hold, etc. These words do not "grant an absolute fee, nor an estate on condition, but "an estate which is to continue till the happening of a "certain event, and then to cease. That event may "happen at any time, or it may never happen. Because "the estate may last forever it is a fee. Because it may "end on the happening of an event, it is what is usually "called a determinable or qualified fee. The grant was "not upon a condition subsequent, and no entry would be "necessary; but by the terms of the grant the estate was "to continue so long as the real estate should be devoted "to the specified uses, and when it could no longer be so devoted, then the estate would cease and determine by its "own limitations. * * Since the estate of the plaintiff may "determine, and since there is no valid limitations over, "it follows that there is a possibility of reverter in the "original grantor, Clark."

In Esterbrook *vs.* Tillinghast, 5 Gray (Mass.), 17, a testator devised real estate in trust to apply the income to the maintenance of a pastor or elder in the church of the town where the testator resided, of a certain faith and practice, so long as the members of that church or their successors should maintain the visibility of a church in such faith and order. Afterwards the only two members at a meeting called by public notice, voted that they should no longer endeavor to maintain the appearance of a visible church. Held, that the church was thereby dissolved and ceased to be a visi-

ble church, and that the trustee held the estate as a resulting trust, for the testator's heirs at law. The Court, by Metcalf, J., said:

> "The devise to the defendant of the property in ques-
> "tion was doubtless a devise in fee (Cleveland *vs* Hallett,
> "6 Cush., 407), and having been made to him as trustee
> "and for a specified purpose only, he holds the property,
> "since the failure of the trust by the extincion of the
> "*cestui que* trust, not for his own benefit, but for the de-
> "viser's heirs at law, and is answerable to them for it.

The Court proceeds to declare that the burial ground of this society cannot be held to be a public charitable use;

> "But the trust was restricted, in plain and unequivocal
> "terms, to the particular society to be benefitted, as well
> "as to the purpose of a burial ground, adding (as if to put
> "the matter beyond doubt), 'and for no other purpose
> "whatever.' The trust would end therefore, at the
> "latest, when the land ceased to be used as a burial ground,
> "and the society was dissolved. Easterbrook *vs.* Tilling-
> "hast, above cited; Reed *vs.* Stouffer, 56 Md., 236, 254;
> "Second Universalist Society *vs.* Dugan, 65 Md., 460;
> "*In re* Rymer (1895-7, 1 Ch., 19, 31, 32)." * * * *

> "In the case at bar the trust created by the deed having
> "been terminated according to its express provisions, by
> "the land ceasing to be used as a burial ground, and the
> "dissolution and extinction of the society for whose bene-
> "fit the grant was made, there arises, by a familiar prin-
> "ciple of equity jurisprudence, a resulting trust to the
> "grantor and his heirs, whether his conveyance was by
> "way of gift, or for valuable consideration."

In our case the purposes of the trusts are exclusive of every other than for the benefit and use of the society in the maintenance of its principles as declared by its constitutions and laws. The titles by the trustees are bound by those purposes; and if those purposes have failed, then as in the Grimshaw case, the property reverts by

way of resulting trust to all those owners of the "joint and indivisible stock," from 1836, as evidenced by membership, and the heirs and next of kin of those of them who have died as members.

REVIEW OF CASES CITED BY THE MASTER.

In considering the cases which the master has cited against our contention, it should be remembered that none are relevant which involve questions:

1st. Where the trust is for an incorporated society.

2nd. Or for an unincorporated society, having for its purposes religious, charitable, literary or scientific purposes.

For the reason that the Harmony Society is unincorporated, and not organized for any of these purposes in the legal sense. There is no pretense that the community in its purposes contemplated a *public use*. Its benefits were limited solely for those admitted to membership and who paid for such admission by a gift of all their property, and of their labor, without compensation.

The cases cited as sustaining the assertion that the grants in this cause do not constitute a base fee, are the following:

First Methodist Church *vs.* Old Columbia Public Ground Co., 103 Pa., page 608:

The covenant in that case was to convey in fee simple in trust for the sole use of the company hereafter to be formed for supplying water. The vendees covenanted that they should, upon erecting a hydrant at his own expense, have a supply of water from the reservoir for his own use. The water company was formed and the vendees released all their rights under the agreement to that company which did construct a reservoir of the size specified on the premises. The grantor or the vendor constructed a hydrant and used the water for some time, and then discontinued the use of it and subsequently died. The water company discontinued the use

of the reservoir twenty-five years after the agreement and conveyed the land to a corporation for church purposes. It was held that the estate conveyed originally was a fee simple and not a base fee.

This case is essentially different from the case at bar, as a reference to it will disclose.

Cook *vs.* Trimble, 9 Watts, 15, only decides that a condition stipulated in a deed of conveyance may be enforced by ejectment, but a consideration even amounting to a covenant on the part of the vendee cannot. Part of the consideration for the sale was a comfortable support and living to be given to the grantor, his wife and daughter.

Kerlin *vs.* Campbell, 15 Pa., 500: Under the Act of Assembly conveyance was made in trust of an old court house and lots of ground for the use of the inhabitants of the County of Delaware, to accommodate the public service of the county; an absolute conveyance was made for valuable consideration, and the trustees made and executed a declaration of trust acknowledging the purchase money to belong to the county. A subsequent Act of the Legislature authorized the Commissioners of the county to sell the premises. The same were accordingly sold and conveyed for a valuable consideration. Held that the estate granted was not a charity or a base fee, but being granted by an absolute conveyance or a valuable consideration, the heirs at law of the first grantor were not entitled to recover the same from the last grantee. The grantor had received the full consideration.

Wilkesbarre *vs.* Wyoming Historical Soc., 134 Pa. St., 616.

In this case the borough of Wilkesbarre was authorized to sell lots of ground, first conveying to the society a lot of a certain size.

In executing this statute, the borough added to the requirements of the statute, a provision or clause in the deed, for the erection of a hall for the use of said society.

The Court held that the clause for the erection of a hall imposed no condition upon the title, and that the borough had no authority to introduce such a clause into the deed.

This case, evidently, has no bearing upon any question involved in this cause.

Petition of Sellers M. E. Church, 139 Pa. St., 61.

The case decides that a

> "conveyance for a *charitable* use, does create a con-
> "ditional estate, but a trust for a *charitable* use, not li-
> "able to be defeated by non-use or alienation, in the
> "absence of an express condition to that effect."

The case turns altogether upon charitable use, and Green, J., collates the cases, p. 67.

In our case there is no such use, and therefore the case cited has no bearing.

Crawford *vs.* Gross, 140 Pa. St., 297.

The property in this case was purchased by a few members, who received certificates of stock for their advances. The property was held in trust.

The contest was between ordinary members and certificate holders. The society became incorporated, and issued new certificates. Held that those certificates were equitable or vendor's liens.

We fail to see any bearing of this case upon any question raised in the case at bar.

We can safely say that no case has been or can be cited which contravenes these propositions:

That a conveyance in fee simple of property to trustees in trust for an unincorporated association, having no limit to its contemplated life, and not formed for a religious, charitable, literary or scientific purpose, carries within its terms impliedly the provision or condition that when the trust fails, or the purpose of the society are abandoned, or the society has in any manner ceased to exist, is a grant of a qualified, determinable or base fee, and that when either of these contingencies have happened, and the trust fails, the property reverts to the donors, or their heirs and representatives.

In conclusion upon this branch of the case, we assert that the law is established in the United States Circuit Court for the Western District of Pennsylvania, by the late Justice Grier, of the United States Supreme Court, and that the same has never been reversed by this Court, to this effect:

First. That the effect of the clause of the articles of 1836, constituting the "joint and indivisible stock," was to vest in every member an equal share of all the property of the society subject to the trusts.

Second. That when the society violated its compact with any members, the contract by which those shares vested in the society was broken, and that in such event,

Third. The member affected was entitled to withdraw his share thereof, in the proportion of himself to all the other members—subject to a like proportion of debts of the society.

There is, therefore, distinct recognition of ownership as we contend for,—a right to a return of it upon the violation of the contract upon which it was given.

The case to which we refer is the case of *Joshua Nachtrieb* against the *trustees of the Harmony Society*, which originated in the Western District of Pennsylvania in the Circuit Court, and the opinion of Justice Grier referred to is reported in 3d Wallace, Jr., page 66.

Nachtrieb brought his bill against the trustees to recover his interest in the funds of the society, because of an alleged series of persecutions which had forced him out of membership. Testimony bearing upon the despotic and unjust character of the society in its government and in its purposes was also introduced. Judge Irwin, presiding in the Circuit Court, had decreed for the plaintiff, and had ordered an accounting, which resulted in exceptions, consideration of which came before Justice Grier.

We quote the following from the opinion of Justice Grier in that case:

> "The case in 2nd Binney, 441, has no resemblance to "the present. That was a corporation for benevolent "purposes where membership and not the ownership "and enjoyment of property to that of the corporator's "own use was the object. They accumulated to give "away or to spend on charitable purposes. These ac- "cumulated for themselves. They have by joint labor, "accumulated property of great value which they hold "as *joint owners. The complainant had an equal own- "ership with his 320 partners. By their contract it is to "remain joint and indivisible stock forever; but the com- "plainant has his right to enjoy it equally with his fellows.*
>
> "I know of no other measure of satisfaction or com- "pensation more just than to give the expelled and in- "jured party *his several share of their joint assets.* The "dissolution of the partnership by the wrongful act of

"the majority of the firm or association, necessarily dis-
"solves, *inter sese*, viz.: as between the expelled and re-
"maining partners, the covenants as to the indivisibility
"of their joint property. Let the decree be for the one
"three hundred and twenty-first part of the whole prop-
"erty of the society. * * * at the time of his expulsion,
"with interest from that date, deducting what the com-
"plainant has received. Decree accordingly."

No question was raised in that case as to the rights of any other persons as claimants to that fund outside of the 320 partners.

It is true this decree in this cause was reversed by this Court (19th Howard 126), but the grounds of reversal were two only:

First. The bill was not framed so as to exhibit such aspects of the internal arrangements and social and religious economy of the association.

Second. Nachtrieb was barred by a release which he had previously executed.

This Court did not express any dissent from that part of Justice Grier's opinion which we rely upon; and, therefore, we regard that opinion as establishing the law that each member since the articles of 1836, is the absolute owner of an equal share of the property of the society when the contract has been broken, and that ownership continued and is effective when by reason of the failure of the trusts from any cause, the society is unable to comply with the terms upon which the gifts were made.

It necessarily follows, under Justice Grier's decision, had Nach-

trieb died, his heirs and legal representatives would have taken his share thus ascertained.

SHIFTING USES.

The doctrine of "shifting uses" does not apply to the case at bar. Mr. Justice Gray, of this Court, in the case of Spiedel vs. the Harmony Society, 120 U. S., 377, expressly held that the trust created for the Harmony Society was for the *common benefit of the community and for the members living together in the community, subject to the regulations of the community and supported by the community.*

The citation from 2 Washburn, on Real Estate, page 669, under the title "Shifting Uses," used as an illustration by counsel for appellees, does not apply; the example in that case was a grant to unincorporated proprietors of land on which was intended to be built a church. *Habendum* to said proprietors, etc., *and to each and every person who may hereafter become lawful owner and proprietor of the pew in said house to be built thereon by said proprietors. The use would legally shift to those who would thereafter become pew holders.*

The reason why that example does not apply is that in that case there was an express grant to *members individually* who at any time thereafter became lawful owners and proprietors of pews.

In the case at bar the trust is for the community alone, and therefore is not a shifting use, but is governed by the case of Kain *vs.* Gibbony, decided by this Court in 101 U. S., Rep. 362, to which we have before referred.

In that case the bequest was upon the trust for the benefit of the community of which the testatrix might be a member at the time of her death; and she did die a member of a community known as the Sisters of St. Joseph, *which was an unincorporated association.* Mr Justice Strong, in delivering the opinion of this Court says, among other things:

"The Sisters of St. Joseph is an unincorporated association, "and it is the association as such and not the individual members "who composed it when the testatrix died which is declared to be "the beneficiaries. * * * Its members must be constantly chang- "ing, and it must always be uncertain who may be its members "at any given time. No member can ever claim any individual "benefit from the bequest, or assert that she is a *cestui que trust;* "and the community having no existence can never have standing "in Court to call the trustees to account. This bequest is there- "fore plainly invalid unless it can be supported as a charity."

VIII.

TITLE OF PLAINTIFFS.

Whatever title the ancestors of plaintiffs had since October 31, 1836, in the property of the society, by the articles of that date equalized, descended under the intestate laws of Pennsylvania to the plaintiffs in this cause.

Christian Schwartz, one of the plaintiffs, claims as the sole heir and representative of the following persons, members of the society in 1836 and signatories of the agreement of 1836, as aforesaid, and dying as such members after 1836, viz.:

Plaintiff's father died intestate, July, 1858; his mother, intestate, February 11th, 1857, leaving six children—all of whom were members, and died members (except the plaintiff) as follows, without children and intestate:

Fredericka, January 11, 1857.
Maria, May 26, 1878.
Louisa, March 29, 1889.
Joel, ————, 1858.
Joseph, June 25, 1889.

Antony Koterba claims through Andreas Koterba, who died in Economy, a member, May 25, 1880.

David Strohaker, his father died 1867, and his mother in 1875, both dying in the society; his aunt died a member in Economy in 1865.

Allen Shale and G. L. Shale claim through their grandfather, who died a member of the society in 1855, and through their uncle, who died in Economy in 1837.

IX.

The master errs in his conclusions contraverting appellant's right to maintain this bill and to the reliefs prayed for.

Those conclusions are as follows:

First. In his construction of certain provisions of the Articles of 1836, as a bar to appellants claim.

Second. In treating appellant's claims as intended to recover specific contributions of their ancestors or of themselves to the society, from the society, as an existing organization.

Third. In holding that certain decisions apply adversely to appellants' claims.

First. The master, it is submitted, errs in his construction of the provisions of the Articles of 1836, upon which he relies:

The parts referred to are as follows:

> "Second. All the property of the society, real, personal and mixed, in law or equity, and howsoever contributed or acquired shall be deemed, now and forever, "joint and indivisible stock. Each individual is to be "considered to have finally and irrevocably parted with "all his contributions, whether in land, goods, money or "labor; and the same rule shall apply to all future contributions whatever they may be.
>
> "Third. Should any individual withdraw from the "society, or depart this life, neither he, in the one case, "nor his representative in the other, shall be entitled to "demand an account of said contributions, whether in "land, goods, money or labor, or to claim anything from "the society as matter of right. But it shall be left altogether to the discretion of the superintendent to decide "whether any, and if any, what allowance shall be made "to such member, or his representatives as a donation."

(*a*) He is in error in his construction of those clauses. Each member was then parting with his right to reclaim his former contributions, and was conveying to all the members equally all the former contributions he had held in severalty, which was then converted into a "joint and indivisible stock," in which all members were henceforth to be joint owners.

The society sought to bar any future claim for the *original* contributions thus conveyed by way of covenant that such contributor should never demand an account of such *original* contributions.

Not merely had the members revoked their right and title to reclamation, but they also covenanted not to seek to defeat the revocation by making any demand in law or otherwise therefor.

With this right of reclamation gone for the past contributions and with the waiver of their right to sue for the same, all the members found themselves equal owners of all the property, which they

then and there bound by a trust for the benefit and use of the society. If the trusts were valid, their title to that stock had already gone beyond recall so long as the trust continued to validly exist.

(*b*) The provision referred to at all events, relates only to claims against the society as a *going, continuing society*; and contemplates the barring of an *individual* suit to secure a withdrawal of an *individual contribution* from the society, to which the society would be necessarily a defendant.

By no logical process of reasoning can the clause cited apply when the sole question in the cause relates to the entire *corpus* of the trust estate, lying absolutely unprotected by reason of the defeat of the trusts which had covered it, and to the person or classes to which in such event, such property should go.

Second. We have never claimed to recover specific contributions of our ancestors; or that we were members of the society at any time. The master raises false issues.

The plaintiffs do not sue to recover specific contributions; nor do they sue the society at all; they are demanding no accounting at all of specific contributions of their ancestors; they do not regard the society as living; but as defunct; its purposes defeated; its trusts inoperative and ended; and their suit, if successful, transfers the ownership of the trust estates from the last survivor to all, including those who were and are protected by the articles of 1836, as joint owners of "the joint and indivisible stock"—the subject of a trust, which is now defeated.

If in truth the trusts are defeated, the question of reversion and distribution and the rights and titles of claimants are imperatively before the Court, because no written word controls such disposition.

Certainly the last survivor cannot take, because he could so take only as a joint tenant with right of survivorship, and that tenancy we submit does not exist.

Neither can the property escheat as we have attempted to show.

And, therefore, as we have asserted, in our bill, and seek to sustain by our argument, that property must go to all who were and are joint owners, and who created the trusts by which it was dedicated to the benefit and use of the society.

Third. Let us refer to the cases cited by the master and relied upon by the appellees—always bearing in mind the real positions and claims of appellants above stated.

PRIOR CASES AGAINST THE HARMONY SOCIETY.

The master claims that the land involved in this cause, is situated in, and this Court therefore is bound by, Pennsylvania decisions, relating thereto.

There is no such cause in Pennsylvania which lays down a rule of property; and there is no statute of this State affecting any question involved in the case at bar, which has received a construction by the Courts of this State. There is therefore nothing which precludes this Court from passing upon the questions involved herein, as of the first impression.

We confidently assert that there is no such prior case, decided either in Pennsylvania or in the United States Courts, which can justly be cited against us and the positions we contend for.

We submit to the Court that no case either affecting the Harmony Society or any other similar society has been cited, which involves a recognition of the *termination of a communistic society by unlawfulness of trusts, failure of trusts, abandonment of principles, or by actual liquidation, and which seeks a general distribution of property among all entitled to distribution.*

And that the present bill, following these lines, is the only case within our knowledge where these questions are raised, and that therefore the questions now involved are not to be ruled by any of the defendant's cases.

In every one of the cases cited, the plaintiff recognized the *existence* of the society, as a going concern; did not seek to have its life declared terminated; but sought only to make the defendant pay the plaintiff either the amount he had contributed to the society, or the value of his interest in the property, or compensation for his services. Each plaintiff sought an individual recovery or an individual relief, consistent with the continued life of the society, and not one sought the appointment of a receiver, a winding up, and general distribution of property.

In many of the cases in other States, the society was either a corporation, or a religious, or charitable body, and therefore those cases are not relevant.

The first case arose in the State Court, at the suit of Peter Schreiber's administrator, and was in *account render for his share of the profits* arising under the joint transactions of the society.

It went to the Supreme Court of Pennsylvania and is reported in 5 Watts, page 351.

The action declared for an alleged partnership, and *therefore affirmed the rightfulness of the partnership.*

At that time the only existing articles were those of 1805, 1821 and 1827, and they were of necessity the only articles offered in

evidence. It is to be borne in mind that up to the date of that case and until the articles of 1836, it was the recognized feature of all the agreements that any dissatisfied member could *withdraw*, in which *event his contribution would be returned to him, in installments without interest.* The Articles of 1836 were not in existence. Those articles changed the constitution, and thenceforth there was no *right* of withdrawal recognized accompanied by restoration of property.

Peter Schreiber, in his lifetime, had executed and delivered a deed to "George Rapp and his associates," dated August 28th, 1826, of all his property, real, personal or mixed, brought by him into the society. He died in the society, *without exercising his right of withdrawal.* The intestate had also executed a *release* to the society *in the broadest terms of every suit, claim or demand against* Rapp and his associates from the beginning of the world.

There were no creditors of the decedent's estate.

No allegation of fraud or deceit was made as to the procuring of Schreiber's deed, or his release; nor that the society in its organization was *against public policy.* Judge Bredin *did* leave the question of fraud to the jury; but Chief Justice Gibson held that in so doing he committed an error—but an error of which the administrator could not complain.

And the learned Chief Justice Gibson said further that the only way the existence of the society could be attacked was that such existence was void from illegality.

The point in the case was disposed of by the Chief Justice as follows, viz.—

> "It is supposed, however, that *as the intestate had "power, by the articles, to secede from the society and to "take out of it whatever he had brought into it, the suc-"cessor to his personal rights, may exercise it as his "representative.* Such, however, are not the terms of "the articles; nor would a posthumous exercise of the "power consist with the disposition he thought fit to

"make by dying in fellowship. * * * The right of se-
"cession, therefore, is intransmissible; and were it not,
"the intestate's release would be a barr."

The next case in order of time, arose in this Court at the suit of Nachtrieb against Baker *et al.* in equity, and was decided by Judge Grier, in 1847, in the Court below. On appeal his decision was reversed by the Supreme Court of the United States, reported 19th Howard, 126.

In that case Nachtrieb asserted his right *to an accounting for his share of the assets of the society*, was confronted by his writing of withdrawal, dated June 18, 1846.

The Supreme Court of the United States, in that case expressly recognizes the right of inquiry for equitable relief, to show the

"Rule of the leader, instead of being patriarchal, was
"austere, oppressive or tyrannical; his discipline vexa-
"tious and cruel; his instructions fanatical, and, upon
"occasions, impious, his system repugnant to public or-
"der, and the domestic happiness of his members; his
"management of their revenues and estates, rapacious
"and selfish, or dishonest; and that the condition of his
"subjects was servile, ignorant and degraded, so that
"none of them were responsible for their contracts or en-
"gagements to him, from a defect of capacity and free-
"dom."

The Court further held, however, that in order to assert claims for relief: "It was a necessary prerequisite that this bill should have been so framed as to exhibit such aspects of the internal arrangements and social and religious economy of the association. This was not done; and for this cause the evidence cannot be considered."

The caused passed upon the voluntary withdrawal of Joshua Nachtrieb from the society, by a paper, which is as follows:

"To-day I have withdrawn myself from the Harmony "Society, and ceased to be a member thereof; I have also "received of George Rapp two hundred dollars, as a do- "nation, agreeably to contract." "Economy, June 18, "1846. "JOSHUA NACHTRIEB."

And that paper was held by the Supreme Court of the United States to be more than an admission, and stood in a different light from an ordinary receipt. "The writing must be treated as the contract of dissolution between the plaintiff and the society, of their mutual obligations and engagements to each other. No evidence of prior declarations or antecedent conduct is admissible to contradict or to vary it."

The character of the association is found, by this decision to be as follows:

"*The members were associated and combined* by the "common belief that the *government of the patriarchal* "*age*, united to the community *of property, adopted in* "*the days of the Apostles*, would conduce to promote "their temporal and eternal happiness. The officers of "the society *surrendered all their property* to the society "for the *common benefit*."

The Court further says, after reviewing the pleadings:

"This statement of the pleadings shows that no issue "was made in them, upon the merits of the doctrine, "social or religious, which form the basis of this asso- "ciation; nor any question in reference to the religious "instruction and administration, or the domestic econ- "omy or physical discipline which their leader and the "other managers have adopted and enforced; nor do "they suggest any inquiry into the condition of the mem- "bers, or whether they have experienced hardship, op- "pression, or undue mortification from the ambition, "avarice or fanaticism of their guides and administra- "tors."

It is therefore evident that so far as the Supreme Court of th United States is concerned, that had the pleadings shown such a issue, the Court would have considered the evidence, and if sus tained, granted relief.

The case of Spiedel *vs.* Henrici, in the Supreme Court of th United States, reported in 120 U. S., page 377, went off upon th *staleness of Spiedel's claim*, the Court saying that a Court o Equity will not assist one who has slept upon his rights, an shows no excuse for his *laches* in assorting them. The point i expressed in the syllabus as follows:

> "A bill in equity against persons holding a fun "avowedly in trust for the common benefit of the mem "bers of a voluntary association, living together as a "community, subject to its regulations, cannot, whethe "the trust is *lawful or unlawful*, be maintained by on "who has left the community, and for fifty years after "wards taken no steps to claim any interest in the fund."

Spiedel's claim was based on contributions *made under the Articles of 1805 and 1827, and before the Articles of 1836.* He left the society in 1831—while yet he had the right upon withdrawal to demand and receive the value of his contributions.—He sued as *a cestui que trust*—not as a donor of a void trust—for his specific contribution. In our case we claim nothing except in case of dissolution, and then as representatives of donors of property provided for *by the Articles of* 1836.

In this case the Supreme Court of the United States distinctly held that the trust under which the assets and property of the community was held, *was an express trust* and totally inconsistent with the trust which the plaintiff, Spiedel, set up, to-wit, tha the fund was held in trust for the benefit of the same persons, a individuals, though withdrawn from the community, living b themselves, and taking no part in its working.

It was distinctly stated that this decision does not rest in an

degree, upon the judgments of the Supreme Court of Pennsylvania, and of the Supreme Court of the United States, in favor of the trustees of the Harmony Society in suits brought against them by other members, because each of those cases differ in its facts, and especially in showing that the society had written articles of association which are not disclosed by this bill, and the Court refers to the cases of Schreiber *vs.* Rapp, 5 Watt, 351; Baker *vs.* Nachtrieb, 19, Howard, 126.

It is plain, therefore, that under the decision of the Supreme Court of the United States, the trust under which Rapp and his associates held the property in common, was *an express trust*, and second, that a bill appropriately drawn could attack the character of the trust and procure relief, unless the plaintiffs were barred, either by a release, as in the case of Baker *vs.* Nachtrieb, or by the staleness of their claim, as in the case of Spiedel.

The bill in the case at bar proceeds upon widely different lines; avers the express trust upon which the assets were held; their great value; their waste; the termination of the existence of the society, by abandonment of principles, depletion of membership, unlawful processes of liquidation of debts, and the actual winding up of its affairs through the intermediation of the Union Company—the conspiracy to wreck, the processes by which the machinery of apparent management had practically centered in Duss, who absolutely swayed and governed the ignorant old women to whom he was obliged to resort to fill up his eldership.

And the prayers *inter alia* are for a receiver, a marshalling of the assets and a winding up of the society.

THE SOCIETY NOT RECOGNIZED AS A DEFENDANT.

The decision of the Supreme Court of the United States in the Nachtrieb case, in which there is a reversal of Judge Grier's decree, limits itself expressly to the point that the bill in that case did not contain the averments to justify the admission of the evidence upon which Judge Grier had based his decree. There being no such allegations, the paper signed by Nachtrieb stood as a bar to his bill. Judge Grier had arrived at no wrong conclu-

sions from the evidence: his conclusions of law were unattacked. *But* the fact remained that both must be disregarded *because* that evidence and those conclusions could not be related to any appropriate allegation in the bill.

It follows, therefore, that the decision of Judge Grier is the unreversed law of this Court, and binding upon the master in this case in every respect, upon every question in this cause which was not considered and passed upon in that decision.

The other authorities cited by the master do not apply because they were all cases of attempts on the part of members to *either recover for services performed by them, or to get possession of property of societies which were in full life and being, and in none of them was there any allegation that the purposes of the society had been abandoned, nor was the claim to recover based on any claim of a reversionary interest consequent on an abandonment of the purposes.*

The case of Waite *vs.* Merrill, 4 Mo., 90, was an action against the society of Shakers by a member *who had withdrawn to recover the value of his services* on the ground that the agreement or covenant under which he had agreed to contribute his services and property, and released his right to reclaim any share thereof, was void as against public policy.

The Court held that the covenant between the members of the Shaker Society was not void and that the plaintiff was bound thereby, and that if it were illegal that the plaintiff could not recover on the ground of *in pari delicto potior est conditio defendendis.*

It was held further that the articles of agreement between the members were not void as against public policy.

1. *Because they did not prevent marriage,* but on the contrary marriage was *expressly* allowed; and that if there were a contract

not to marry, it was not a *perpetual one, but simply endured while membership in the society continued.*

2. That in as much as any member *could withdraw* when he *chose,* it was not void because it deprived the plaintiff of the power of acquiring and protecting and possessing property in as much as it only changed the mode in which he chose to exercise and enjoy this right or power, even though he lost his property when he withdrew.

3. That civil tribunals have no jurisdiction over questions of *ecclesiastical belief.*

In this case it will be noted that the society was in *full force and vigor,* and that the attempt was to recover on an *impled contract* for services, when an *express contract* expressly forbade such recovery and there is no question of abandonment or reverter.

The case of Brown *vs.* Dale, 9 Ch. Div. Law. Rep., page 78, is inapplicable because the contest there was, as to the right of members to *participate in the funds of the society,* who had been admitted *subsequently to a resolution dividing its property among existing members,* and there was no question *abandonment or reverter, or any claim of persons who had previously been members of the society, or their descendants.* In that case the society was a voluntary one and had no printed laws or rules regulating the disposition of the money, property or admission of members; but there had been a custom for the members of the company for the time being, or a majority at any meeting to exercise unlimited control over the management of the company's property, and that it had been the practice to admit *sons* of members as of right attaining twenty-one years, and becoming freemen of the Borough of New Castle on Tyne; and under these circumstances the Master of the Rolls held that the fund should be divided among the persons who were members of the guild at the time when the resolution dividing the property was passed. At this time there were *no persons who were members or entitled* to be admitted members other than *the plaintiff and defendant.*

The case of Grosvenor *vs.* United Society of Believers, 118 Mass., 78, was an action on a contract to *recover for services rendered* to the defendant society of Shakers from which the plaintiffs had been expelled; and here the whole question turned on the *legality of the expulsion,* the Court holding that under the covenant or articles of association the plaintiff had not an absolute right of support, but a qualified one, namely: that she was only entitled to support *"According to her needs and circumstances while standing Gospel Union and maintaining the principles of the covenants,"* and having been *rightfully expelled she could not recover.* Here there was no question of reverter or abandonment of purposes.

The case of Burt *vs.* Oneida Community *et al.,* 137 N. Y. Court of Appeals, page 346, was an action in equity brought by the plaintiff, a member of the *Oneida Communists, an unincorporated association, against the Oneida Community Limited, a domestic corporation,* and certain individuals alleged to be members of the community. The relief sought was that an alleged expulsion of plaintiff from said Oneida Community be *adjudged void, and that he be adjudged to be a member thereof; that an alleged dissolution of said community be adjudged* illegal and void; and that the Oneida Community Limited should be adjudged to hold the *property* in its possession for the plaintiff and the other members of the *Oneida Community;* that the members of the latter be adjudged *partners or owners of such property, as tenants in common* and that an accounting be had and a decree be rendered for a division and distribution of the same.

By the articles of association which were signed by plaintiff, each subscriber surrendered his individual property and it became an inseparable part of the capital of the community: it was also entitled to all the earnings of its members; each member was at liberty to withdraw at any time, but in case he did so he was not entitled to take or demand any share of the joint property. There was also a material stipulation that *no member* would *ever bring an action* or proceeding to recover wages or compensation for services or to recover any property contributed, or make any claim or demand therefor. Plaintiff had never *contributed any property,* but had contributed his services as traveling salesman. In 1880 he left and entered the service of a rival company. In

1880, after the plaintiff left the society, *nine members thereof took out a corporate charter.* The object of the corporation was to carry on a *general manufacturing and agricultural business,* including all the different kinds of business in which the community was then engaged. The capital stock was $600,000, which fairly represented the net value of its property, and since the incorporation of the Oneida Community Limited, had carried on all the different kinds of business which they had carried on first as an unincorporated association.

Among these members were those *who held the title* to the real property of the community. The property of the community was all turned over to *this corporation* and the capital stock was taken by all the members of the community, and thereafter the unincorporated association did not engage in any business nor did it undertake to discharge any of the obligations in its covenants with the members. Counsel for plaintiff contended:

1. That plaintiff was illegally expelled; that the Oneida Community being a voluntary association is to be deemed a mere partnership.

2. That the real estate was acquired and contributed by the members for the use, benefit and profit of the association or partnership while it lasted, and no valid trust could have been created by agreement of the parties so as to vest the same in the property holders as trustees for the uses of the association. The only trust was that which resulted from the acts of the parties—the resulting trust created by law.

3. That the conveyance of all the property of members of the community by the property holders to any persons except a full member, was illegal; that if the property holders were authorized to convey it to a corporation, the corporation was not capable of holding it and using it for the purposes of the Oneida Community.

4. That the conveyance of the property to the corporation was fraudulent.

The Court expressly said that it decided the *question on the ground* that this was a business compact and was a *business community*, and as such it was not prohibited by any statute, nor was it in contravention of any law regulating possession, ownership or tenure of property; that it imposed no unlawful restraint upon the alienation of property for the title of *real estate could be transferred at any time by the united action of the members* if they saw well to do.

That by the articles of association the plaintiff acquired no divisible interest in the property of the Oneida Community, but only a right to its use while he remained a member; that it was a joint holding of the property by the members of the community with this qualification, that upon the death or withdrawal of a member, no share or interest passed to him or his personal representatives, but they who survived or remained continued to hold jointly the entire property in *solidium* and that, as the plaintiff had withdrawn, his action must fall.

That whether or not the incorporation of the society and the turning over of the property of the association to such corporation amounted to a dissolution was not decided, and that if it were found as *a proposition it would not help the plaintiff because he had ceased to be a member of the community before this action was taken, and his property rights were not prejudiced by it.*

This case is distinguishable on several grounds.

1. The Court places its decision expressly on the ground that the plaintiff withdrew from the community without cause, while it was a *living organization*, and that his rights were by that act determined. There was therefore no question or no decision as to what would have been the rights of persons who died while members in the case of subsequent abandonment of the purposes of the society, or in case it had subsequently ceased to be a living organization.

2. The plaintiff in this case sued and based his sole right of

action on the fact that he was a *member of the society* and the Court found that he was not a member, and this question is therefore not passed upon.

3. A conveyance of the property of the unincorporated community to the association was joined in by every member of the community except plaintiff and the corporation carried on the same business for the same purposes as the unincorporated association, and it was a mere change in *name* and not a substantial change of ownership.

4. The Court did not pass upon the ground of *public policy*, but simply regarded the incorporated association as a *business community* and refused to go back of it, and held that it was a mere matter of contract between the parties.

5. The Court refused to pass upon the question whether the transfer of all the property to the corporation was a dissolution or not because the plaintiff could not raise the question on account of want of interest.

6. Thus, while the Court says that upon the death or withdrawal of a member no share or interest in the property passed to him or his personal representatives, the case cited by the Court sustaining this position expressly put that decision upon the ground that the association was a *living organization*, and was following out its purposes and intent and the whole case is decided on the theory that it was in *full life and existence at the time*. And in effect, the whole decision was simply a denial of the right of a member who had lawfully withdrawn to wind up a going-business partnership.

In the case of Gasleys *et al vs.* The Separatists Society of Zoar, 18 Ohio St. Rep., 144, a member of the society who had withdrawn asked for a partition of the property which was held in common, and the Court held that she had no separate or divisible interest therein which would entitle her to relief. There was no question of *abandonment* in this case. *The society* was in full

operation. It was urged in this case that there was no grantee capable in law of holding this property; and 2nd. That the articles were void as creating perpetuity. *The society was incorporated under the laws of Ohio in 1832.*

The Court, while not passing upon these questions on the ground that the plaintiff *had no interest which would enable* him to raise the question, on page 154, said that if the attempted transfer to the collective membership for the exclusive use of the society were void as creating perpetuity the property *reverts to its former owner,* but does not devolve upon incoming members subsequently, in whom it was not previously vested and who acquired no separate interest therein by the articles, still says that there is a grave question "whether the perpetual diversion of the property and its proceeds to the uses of the society, qaulified by the powers delegated to the directors and the majority of the members creates such a perpetuity as avoids the surrender." (page 156).

In this case the property was purchased by one Goesele *in his own name,* and subsequently his associates were allowed to take title upon *paying for the property by their labor, etc. Subsequently* to this, however, it was declared that the property was held in common and the members renounced all their personal interests and invested the property in the society with the declaration that the property should be and remain the property of the society forever. There was no gift *here* by any individual but simply a renunciation and a gift to the society as such. The case simply decides that where a member of such a society withdraws he is not entitled to any partition of the property, while the society *remains in existence* and fulfilling the object for which it was erected.

And the society was incorporated in 1832

In Goesele *vs.* Bimeler, 14 How., 589, it was held that the conveyance of the property of the defendant society was not void as creating a perpetuity, on the ground that the members of the society acting unitedly could *sell the* property and that in the present case the property was *absolutely* the property of *the society*

and was only managed by a *Board of Directors and was incorporated* and there was no restraint.

In our case the legal title to the property is vested in a *self-perpetuating Board of Trustees,* who have no other power than to change investments and when they sell land they are required to hold the proceeds in the same trust as they hold the land.

The master in his report quotes the grant contained in the agreements of 1805 and 1827, and thereupon avers "that this does not create a limited or base fee."

We have never alleged they did. Under both of these agreements, individual members had the right of withdrawal from membership and to receive the property contributed back upon such withdrawal without interest.

The master wholly fails to consider the Articles of 1836, upon which alone we base our contention. We repeat that the grants of 1836, do

1st. Merge all prior contributions of money, land and labor, and all future acquisitions, into one "joint and indivisible stock."

2d. That all the then subscribing members and all future subscribing members, were equally interested therein.

3d. That all acted in putting that stock, lands, moneys, goods, proceeds of labor, into the hands of trustees, by titles in fee and absolute for the benefit and use of the society.

4th. That there was impliedly and necessarily in such grants the provision that when the trust failed, the fee and absolute title

thereto should revert to those who parted with it in trust—namely the members since the making of the grants, living, and the heirs and legal representatives of members dying in the society.

5th. Because the terms of the trust provide no remainder over, makes no scheme of tontine or joint tenancy with survivorship, or any distribution whatever in the event of the failure of the trust, and that therefore necessarily the grants are limited or base fees.

This "joint and indivisible" stock comprehending all the present and future property of every description, is subjected to the trusts declared in the Articles of 1827, because the Articles of 1836 re-affirm those of 1827, except the 6th section, relating to restitution.

Therefore the trust declared in the first article of the agreement of 1827, defines its terms, from 1836 down to 1847 to wit: "As a free gift or donation for the benefit and use of the said association;" and by the agreement of 1847—article 6th—(65) the property is to be held and deemed the common property of said society, and each trustee then and thereafter appointed disclaims all personal interest therein, "other than that of a member thereof."

Prior to 1836, viz.: in 1825, Frederick Rapp, the then trustee (M. R. 142), executed his declaration of trust; and on July 5th, 1834, George Rapp, his successor, and Baker and Henrici, George Rapp's substitutes, executed their several declarations of trust (M. R. 145), fixing absolutely the titles, removed wholly from personal interest, in and for the benefit and use of the society, without remainder over.

Suppose the society dead. Where then by its terms is the property of the society to go?

In our case the estates are taken upon the trust that in the event the trusts fail or the society is dissolved by process of law or

by voluntary dissolution, or by abandonment of purposes, or from any cause, they shall go in some direction by resulting trust or to survivors, or by *escheat* to the Commonwealth. Nobody will contend that it is part of the trust, that in such events the trustees acquire a title for their own use.

LAPSE OF TIME.

The appellants have and do contend that this trust must revert on several grounds.

1. Because the society itself is non-existent, for many reasons already and hereafter to be given, and therefore the trusts, if otherwise valid, have failed.

2. Because the trusts, the society living, are void; the society itself and its principles are against public policy; the trusts violate the rule against perpetuities, and the statutes against accumulations, and for other reasons.

The master, as respects the second class of reasons, alleges that the plaintiffs are barred by lapse of time, from asserting that the trusts are void, because such as they are, they have existed for many years, and the attack upon them for these reasons, should have been made many years ago.

In other words, an admitted violator of public laws, claims in a Court of Equity that those violations shall continue because they had been continued for many years without molestation.

This proposition of the master pre-supposes that there was a moment of time when our ancestors or ourselves were judicially

fixed with knowledge and impressed with the equitable duty of action that the grants were void, because of the badness of the society's purposes, its incapacity to take and hold property, and because the grants create a perpetuity, and that that moment of time began with the creation of the society, or the creation of the trusts. And the conclusion therefore is, that a society admittedly bad, as his argument assumes and violative of public policy; a society incapable in law of taking property either directly or indirectly—a society which is the beneficiary of grants admittedly in defiance of the laws against perpetuities, may never be declared void by a Court of Equity, because such decree had never been sought for in the past. It is a *living thing only* which may plead laches or lapse of time, against one who seeks to separate for himself a portion of the property held by the living organization. A void community, an association violative of law, can have at no time a claim in equity, to continue to be regarded as not void and not violative of law, because it had for years escaped an earlier attack. Upon the hypothesis of the master's proposition, the society is a wrong doer, and because it has escaped thus far, it has acquired a legal right to escape forever.

Statutes of limitations, the statute of frauds, the doctrine of laches, and of estoppel, are all intended to *prevent* frauds, and not to *protect* and *sustain* them.

These trusts, if they are void, as the master necessarily admits they are when he urges lapse of time as a bar, never had an existence susceptible of growth; each day the exercise of them is a new birth and a new date for attack.

The master also necessarily admits that appellants have the legal and equitable right to assail these trusts because they are void, had they not been barred by lapse of time in instituting the attack. *But these trusts were just as void at the time of filing this bill as at the date of their creation, and are just as void to-day;* and the trustees are just as incompetent to maintain them to-day as at any former date. The trustees do not claim to-day, nor have they ever claimed the property of the trusts as their own, freed of the trusts; they admit they hold as trustees. As trustees they are and always have been the subjects of a Court of Equity. From the very beginning a Court of Equity has had a potential grasp of the trusts, the trustee, and of the property of the trusts. There has never been a time therefore, that such a Court has lost its juris-

diction. It is submitted that there is no case which ousts that jurisdiction by a plea that time has run against the Court. Certainly there is no case which recognizes the *right* of trustees, who admits that the trusts under which they are acting are void, and that in fact they are not trustees at all, to assert that, *nevertheless*, the trusts are to be regarded as *operative* and they are to be recognized as trustees, and protected as trustees because of the lapse of time. Trusts *ex maleficio* are raised for punishment and penalty only against the trustee in his own wrong, to hold him to a personal accountability. But he cannot claim a standing as a trustee *ex maleficio*, as if he were a trustee by right, and claim the protection of the Court to continue to be such trustee, because he had always been a trustee in his own wrong.

This question does not arise between the *cestui que trust* and a trustee for him. This is an express trust evidenced by writing, and the plaintiffs are in the class of donors and not donees.

X.

The Harmony Society Has Ceased to Exist.

The general principle is that a Court will determine that when the purposes of a voluntary association fail, or cannot be carried out in accordance with its articles of association, or constitutions, or whenever the objects of a society are impracticable, or its organization is in the nature of a fraud, the association will be declared dissolved; and further, that the question of dissolution is a matter of fact for the determination of the Court, as are also of what are the purposes and objects of the society.

Bean on Beneficial Associations, Secs. 37, 38, 39.

The master finds as matters of law:

1st. That the Harmony Society continues to exist because the present surviving members have not formally declared it to be dissolved.

If this be sound, it can be so only because the scheme of t trusts creates a joint tenancy with right of survivorship, or a syste of tontine, by which the surviving members are individually t sole owners of the trust property.

2nd. That abandonment of the purposes and principles of t society is to be evidenced only by the formal actions of *all* the mem bers as individuals.

And in this he can be right only upon the assumption of the e istence of the joint tenancy or system of tontine.

If we are right, as we think we are, in our contention tha no such tenancy was created expressly or by implication, the the Master's conclusions are erroneous, and we are left free t show to the Court, if we can, that this Court should declare th Harmony Society non-existent, by abandonment of its princip and purposes; its inability and incapacity to carry them ou and by acts of liquidation and waste. And as a consequenc that the trusts fail, and the corpus of the trust properties ar before the Court for distribution.

It will be conceded that the trusts were created solely for th purpose of maintaining and carrying out the principles and pu poses of the society. That is their sole function and reason fo living; when that reason ceases to exist, the trusts end.

Now, the purpose of the Harmony Society was to form a com munity, composed exclusively of members formally admitted, whic should recognize a patriarchal government, including communi of goods as adopted in the Apostolic days. (See Articles of 182 Record, page 221.)

The patriarch was therefore the absolute law giver and had th absolute power; the members had no voice, and by the constitutio

agreed and covenanted that they should have no voice in the patriarchal power, either by the selection or deposition of the patriarch, and no appeal from his decisions. For this we appeal to the Articles of 1805 (Record, page 218); the Articles of 1821 (Record, page 220), and the Articles of 1827 (Record, page 221).

Upon the death of the first patriarch, George Rapp, in the year 1847, a new system for the exercise of the despotic powers of the patriarchy was provided, so that they should be exercised solely by a Board of Elders therein selected, who should be self-perpetuating, and of whom two were to constitute a Board of Trustees, also named, to be filled by the self-perpetuating Board of Elders from time to time as vacancies therein should occur.

This new system was provided for by the Articles of 1847, heretofore in this argument printed at length, and which is on the Record, page 225.

An important consideration in them is that the members of the society, outside of those who composed the boards, had no voice, power, control of, or check upon the boards. Their duties were to surrender their individual properties, to give cheerful obedience to the laws and regulations of the boards, and to labor without compensation for the benefit of the society, they and those connected with them; their sole rights were to have lodging, meat and drink, medical attendance, etc. They had no power to charge or modify any trust or power, or to enlarge powers or impose new duties upon their superiors; not even to vote for the selection of members of the board.

So that the subsequent Articles of 1890, 1892 and 1894 gain no validity because they have been assented to by members; nor is the ratification of past acts or authorization for increased future powers of any force, merely by reason of the signatures, simply because of want of power to do these or any other governmental thing.

This leaves us then to consider the powers, rights and duties of the Board of Elders, and the Board of Trustees—the sole repositories of all the powers of the patriarchy.

And first: The Board of Elders had no voice or control over the trust properties, their acquisition, accumulation or accretions, the investment, management or disbursements of the property. All these were solely and absolutely within the exclusive control and dominion of the Board of Trustees, without accountability. And this constitution was the result of contracts entered into by the Articles of 1847, which have never been and cannot be changed because the rights of other non-members are involved.

Hence the Board of Elders were incompetent by later articles, if they had acted as a board (which they have not done), to control in any way the Board of Trustees, or to enlarge or diminish their powers.

We sustain these statements as to the Board of Elders by reference to the 3rd Article of 1847 (Record, page 226). The Board of Elders have these powers:

> "Article 3rd. The Board of Elders shall have and exercise the following powers, to wit: 1st. To regulate and manage exclusively the internal temporal concerns of the Harmony Society; to appoint and remove superintendents in the several departments of industry; to make regulations and give orders in relation to their business operations, and generally to take care that the members perform the duties assigned to them. 2nd. To determine all disputes and misunderstandings amongst the members of the society; to advise if necessary, reprove any member who may be in fault or found delinquent in his duty. 3rd. To admit new members into the society and to expel them therefrom. New members when admitted shall subscribe this agreement as the evidence of their membership, and of the rights acquired by, and the duties imposed upon them. 4th. To establish regulations for the maintenance and improvement of the morals of the society and for the instruction of its members. 5th. To appoint one or more of its members spiritual leaders and instructors, with such

"authority in relation to church and discipline as shall "be conferred by the board. 6th. To remove from the "Board of Elders, and declare his seat vacated, also to "remove from office either or both of the trustees herein- "after appointed for the management of the external "affairs and their successors in office. 7th. To fill all va- "cancies in the Board of Elders occasioned by the death, "resignation or removal from office of any of its members "and their successors, and so as often as a vacancy shall "occur, to fill all vacancies in the office of trustee, when "either or both of the trustees or their successors shall die, "resign his office, or be removed from the same, and so "often as a vacancy shall occur. 8th. The concurrence "of six members of the Board of Elders shall be deemed "the act of the board and a legal exercise of any of the "powers hereinbefore conferred on the said board. 9th. "A record book shall be kept in which the Board of Elders "shall enter all proceedings that they shall consider of "sufficient importance to be preserved. In all contro- "versies, judicial or otherwise, in which the society or "any of its members may be a party, such record shall be "full and absolute evidence of the facts and proceedings "therein contained, and the affirmation of any elder shall "be competent evidence of the identity of the said record."

What powers have the Board of Trustees?

"ARTICLE 4th. We do further ordain and establish a "Board of Trustees, for the exclusive management of "the external business and affairs of the society, which "board shall consist of two persons, who shall be mem- "bers of the Board of Elders, and their successors, who "shall be appointed as hereinbefore provided. Romulus "L. Baker and Jacob Henrici shall be the first Board of "Trustees.

"ARTICLE 5th. The said trustees shall jointly and "severally have and exercise the powers following, to wit: "1st. In their own names or that of either of them, or "otherwise, to purchase and sell, deal, barter, exchange

"and traffic, make all contracts and bargains in the prose-
"cution of the business, to invest the funds in stocks and
"other securities, and make transfers and assignments,
"to collect debts, receive and pay out moneys, settle
"claims, compromise disputes, institute legal proceedings,
"appoint and dismiss agents, clerks and attorneys in fact,
"and at law, and generally to transact all the external
"business affairs of the society. 2nd. To make donations
"to seceding and excluded members, and to the repre-
"sentatives of those who are deceased, and for such be-
"nevolent and charitable purposes as they may deem pru-
"dent and fit. 3rd. The said trustees shall have power
"jointly to purchase real estate in their own names and
"also in their joint names, to grant, bargain, sell and con-
"vey all or any of the lands and tenements now or here-
"after owned by, or belonging to the said society, and for
"this purpose to execute deeds of conveyance in fee sim-
"ple or otherwise in their joint names, but the proceeds
"of all such sales shall be held in trust for the society.
"4th. For the purpose of providing effectual and con-
"venient remedy in law for all injuries to the property of
"the said society, real and personal, by trespass, ouster,
"detention, conversion or otherwise, the said trustees
"are hereby invested with the rights of possession, entry
"and action in their own names, as fully and to all in-
"tents and purposes, as do and may exist in the said so-
"ciety, and to effectuate this object more completely and
"in consideration thereof, we grant and transfer to the
"said trustees, all such title and interest in the said
"property as shall be necessary therefor. The proceeds
"of all suits to be brought shall be in trust for the so-
"ciety. 5th. The powers hereby vested in the said
"trustees shall extend to and embrace all the property of
"said society, real, personal or mixed, whether stand-
"ing or held in the name of the late Frederick Rapp, the
"said George Rapp, or in any other name or form what-
"soever."

The powers, rights and duties of members are defined in the

rticles of 1827, Articles 1 and 2 (Record, page 222), incorporated nto the Articles of 1847:

"ARTICLE 1st. We do hereby solemnly recognize, re-"establish and continue the Articles of our association "(the sixth section excepted), entered into at Economy "on the 9th day of March, A. D. 1827, in the presence of "John H. Hopkins and Charles L. Voltz, and the supple-"ment thereto, adopted at the same place on the 31st "day of October, A. D. 1836, in the presence of Charles "L. Voltz and William F. Baum, except so far as the "same are affected by the death of the said George Rapp "or hereinafter altered and modified, and to this extent "we declare the said Articles to remain in full force.

"ARTICLE 2nd. We hereby ordain and establish a "Board of Elders, which shall consist of nine members of "the Harmony Society, and their successors, to be chosen "as hereinafter provided: John Stahl, John Schnable, "Adam Nachtrieb, Matthew Scholle, Joseph Hoerule, "John Eberle, Romulus L. Baker, Jacob Henrici, Jona-"thon Lenz, shall be the first board.

Hence the joining of the Board of Elders or of members or of oth in subsequent articles, has no legal effect or authority; and an only be used as an estoppel against them in any subsequent igation involving matters embraced in such subsequent articles.

Now as to the trustees: it is apparent that their powers are nited

1st. To hold the property of the society in trust;

2nd. To manage that trust property; and to change invest-nts from time to time, and to convert personalty into real es-e;

3rd. To institute suits;

4th. To make *donations* to seceding and excluded members.

By Article 6th of the papers of 1847, the trust is declared, and *inter alia* it is declared and provided.

> "And such trustee now or hereafter appointed hereby "disclaims all personal interest in the present resources "and future earnings of the society, other than that of a "member thereof, *according to the Articles of Associa-"tion hereby re-established and continued, and accord-"ing to the present agreement.*"

It is therefore evident that the trustees have no power confided to them as a board to enlarge, diminish or vary the trusts confided to them, and it is also evident that the acts hereafter specified were entirely not within the prescribed powers; nor within the powers of the Board of Elders, nor within the powers of the members, under the Articles of 1847.

XI.

THE PURPOSES AND PRINCIPLES OF THE HARMONY SOCIETY.

What then are the purposes and principles of the Harmony Society, established by its articles, for which the properties of the society have been impressed with the trust by the terms of the trust, and which the trustees have bound themselves by the terms of the trust, to use for their support and maintainance?

CELIBACY:

Celibacy, as early as 1806 or 1807 was ordained by the patriarch under his power to *make laws and regulations.*

The answers admit the "practice" of celibacy since the date mentioned, but deny that the observance of it was *essential to membership.* By the Articles of 1805, no terms of membership are mentioned. Admissions were at the will of the patriarch. It

is also true that many married persons had been admitted, but it is also true that they ceased to cohabit as man and wife after admission.

It is also true that several children were born to members, but it does not appear that such children had been born of intercourse after their parents became members.

To the contrary, every case of retirement from membership figuring in the law cases had its origin in a desire to marry. The rule or law was rigidly enforced, and no marriage was permitted in the society.

In the Nachtrieb case (tried in the Circuit Court below and hereafter more fully considered) Justice Irwin found as an *admitted fact that marriage* and *the sexual intercourse of married persons* were *prohibited* in the society.

COMMUNITY OF GOODS.

Community of goods was recognized as an underlying principle from 1805. The contributions were absolute for the use of the community, reserving the right of restoration in the event of withdrawals.

Community of persons and goods logically demand celibacy as its foundation principle. Otherwise the laws of inheritance would prevent; there would be the inequalities arising from the prolific increase of some and the comparative barrenness of others. Family ties and the consequences arising therefrom would prove speedily destructive of the society.

So celibacy and the non-intercourse of married members constitute purposes of the community, in addition to the other features above noted.

The preamble to the Articles of 1827 (52) fully express the objects and purposes of the society:

> "Whereas, By the favor of Divine Providence, an as-
> "sociation, or community, has been formed by George
> "Rapp and many others, *upon the basis of Christian*
> "*Fellowship*, the principles of which being faithfully
> "derived from the *sacred Scriptures*, include the *gov-*
> "*ernment of the Patriarchal age, united to the com-*
> "*munity of property adopted in the days of the Apostles*,
> "and wherein the single object sought is to approxi-
> "mate, so far as human imperfection may allow, *to the*
> "*fulfillment of the will of God*, by the exercises of those
> "affections, and the practice of those virtues which are
> "essential to the happiness of man in time and through-
> "out eternity."

Thus we have the fundamental principles of the Harmony Society as follows:

1. *Christian fellowship*, including the government of the *patriarchal age, united* to the *community of property adopted* in the days of *the apostles*.

2. The approximation as a single object of the society to the fulfillments of the Will of God by the exercise of affections and practice of those virtues essential to the happiness of man here and hereafter.

3. And the adjudicated cases establish as another doctrine the belief in the Second Advent of Christ, and the nearness of the millennium.

The master finds that celebacy was *not one of the purposes of* the society and was not requisite for admission to membership, but had been practiced since 1807.

He is not sustained by a single competent witness; he is confronted by the admissions of the answers of the continuing custom from the earliest days of the society; also by the power to make and enforce rules and regulations; also by the logical necessity of communism. The adjudicated cases connected with the Economy Society recognize celibacy as a fundamental principle of the Harmony Society. In the Nachtrieb case the depositions of record declared, in the Court below, made by the members in 1847, celibacy as an established principle.

"Community of goods," as adopted in the days of the Apostiles, implied numbers.

At the ascension of our Saviour the number of disciples was about one hundred and twenty (Acts, ch. 1, verse 15). And on the day of Pentecost there were added unto them about three thousand souls. (Acts 11 ch., verse 41).

The definition of a "Community," as given by Webster in the latest edition, is as follows:

> "A *body of people* having common rights, privileges "or interests, or living in the same place, under the same "laws and regulations, as a community of monks."

A "community" is distinct from the idea of family; the word necessarily implies the voluntary association of those who are under no family relation, but who are united in a common scheme of living, acting and government.

> "'Communism' is defined to be 'the re-organization "of society, or the doctrine that it shall be re-organized "by regulating property, industries and the sources of "livelihood, and also the domestic relations and social "morals of mankind. Socialism is especially the doc- "trine of a community of property, or the regulation of

"individual rights and property."—*Sanford's Cyclopedia of Religious Knowledge.*

"Community of goods, the holding of goods, in com-
"mon, implying common ownership and common use
"and enjoyment, but not in law, the right of partition or
"severance."—*Century.*

"Communism, in its ordinary signification, is a system
"or form of common life, in which the right of private
"or *family property* is abolished by law, mutual consent,
"or vow. To this community of goods may be added
"the disappearance of *family life.*"—*Woolsey, "Communism and Socialism,"* page 1.

XII.

THE HARMONY SOCIETY HAS CEASED TO EXIST.

The career of John S. Duss, the present sole trustee, is remarkable. Without previous membership, without contributing any means whatever to the already vast properties of the society, he became on the same day, January 24, 1890, both a member of the society and a member of the Board of Elders.

On July 28, 1890, he became Junior Trustee; Jacob Henrici, the Senior Trustee, being an octogenarian, and in feeble physical condition.

On the death of Father Henrici, which occurred on December 25, 1892, Duss became Senior Trustee. In a short time thereafter, the new Junior Trustee sold out, and then Duss became both Senior and Junior Trustee, and we believe he has adopted the title of "Patriarch."

He was thirty years of age at the time of his admission.

In less than three years he had acquired absolute control of all the trust properties of the society, as technical trustee and dominant governor and controller of the persons constituting the membership, the policy and affairs of the society. There was no one to say him "nay."

This young man, then, accountable to no person, has as exclusive control of this vast estate as any private man could have, short of the legal title in himself. *His expenditures for members is limited to the food, lodging and clothing of a few old people, whose lives had not led them to be dissatisfied with plain living.*

The expectation of being the last surviving member was a reasonable one. The belief at that time was general that the grants to trustees of the properties created a joint-tenancy in the members with right of survivorship; that whoever did so survive, would take them all as his own, cleared of the trusts.

The motive to so survive was natural, and necessarily dominant. We confidently say that not an act has been done since Duss became an elder, which he could control, that did not tend to the accomplishment of that survivorship, and the acquisition of the property to himself.

The situation is admirably described by Irwin, J., in his opinion filed in the Circuit Court below, in the case of Nachtrieb against the society:

"Unless human nature should be proof against the strong "temptation to hasten such results, the dissolving element "would be always at work. The unwritten rules of the "society inconsistent with natural rights and liberties as "seen beyond its own limits, the death of the members, "the expulsion of others, with or without cause, and the pro-"hibition of marriage and the lawful intercouse of the married, "would in time so reduce the community in numbers, as to "make it expedient and proper in the opinion of the survivors to "dissolve and divide the possessions."

Since Duss became the sole expression of power, the sole trustee, he has destroyed the society.

Communism of Property. He has potentially all the property, less the cost of maintaining five or six old people, of peasant extraction, laborers in their working lives, and with plain tastes, easily and economically gratified.

The foundation principle of celibacy is discarded. He lives with his wife and his family, in the Great House at Economy.

He has abolished the Community. For a community implies numbers. The very code of government of 1847, is based on a *governing body on the one part*, and *people to be governed on the other.* Every available living member, females except himself, will not fill the Board of Elders, and there are none others upon whom the government is to be exercised. There are only eight members living, including Duss and his wife.

He has admitted no new members since 1893.

He has purchased the proprietary interests of seventeen able bodied and comparatively youthful men—whose ages were menaces to him, for an average sum of $5,000 each, and has in violation of his trust, perverted the trust funds in his control to pay them. These purchases were acts of liquidation, of partition—a setting apart to the vendors of their shares of the whole estate as appraised by them and by Duss, leaving to himself the residue enhanced by his cheap bargains, for his private share.

He has conveyed every foot of land of the community, every house, buildings, mills, shops, vineyards, farm land, oil and gas wells, and even the bones of the dead members, as they repose in the graveyard, to a capitalistic corporation of Pennsylvania known as the Union Company, and taken in exchange for it its capital

stock—so that the society as such has neither property of the trust, nor the form of government provided by its constitution.

At this period of liquidation, when the appellants claim that Mr. Duss was winding the society up, he effected life insurance of one hundred thousand ($100,000) dollars, in favor of his individual estate and in favor of his children, who were not members; said premiums being paid out of the trust funds in his hands. Not until proof of this was made in this case did he cause such insurance to be charged in favor of the society, and such change was made in consequence of that proof. This act can be defended only upon the theory that Mr. Duss considered the society's affairs liquidated and wound up, and he entitled to the sole possession of the trust assets.

In no one sense, nor in any view, does the Harmony Society exist within the limitations of purposes and principles and the mode and form of government prescribed by its constitution.

We submit the case discloses that not one of those principles or purposes survive.

Numbers form an *essential* feature of a community, and of this community, so the Articles of 1821 provided for the admission of *new members*. The Articles of 1847 confer power on the elders to admit new members, and that power involved a duty.

Not one new member has been admitted since 1893. Duss has purchased at prices averaging five thousand dollars for each, the interests of seventeen members, all of whom except one were healthy and vigorous, and none exceeded a moderate middle age. Their possibility of life was almost as good as that of Duss and his wife. That depletion has never been made good.

It is a significant fact that from 1893 down to the date of the filing of this bill in 1894, and, until this day, Duss has not admitted one new member to the society—thus absolutely and surely dooming the society to extinction.

It is the utmost insincerity to urge, as counsel for appellees has heretofore advanced, and as the master has assented, that new mem-

bership could not be obtained. A joint ownership in four millions of property, a home and maintenance for life in the society, together with the right of withdrawal at any time, possess such attractions as would result in a waiting list beyond parallel. And yet not merely a single member has been admitted, nor has any effort been made by Duss to secure an application for membership.

To-day the surviving members are J. S. Duss, Senior Trustee, and Junior Trustee, who joined the society in 1890.

Susie C. Duss—age 38, joined in 1890.
Karoline Molt—age 54, joined 1887.
Barbara Boesch—age 80.
Katrina Nagel—aged 58, joined 1887.
Franz Gillman—age 77, joined 1887.
Mrs. Hermansdoerfer—age 47, joined 1890.
Christina Rall, 77 years of age.

Except Duss no men remain in the alleged society save Franz Gillman—a German aged 77 years, who joined the society in 1880. He can neither read nor speak English, though in this country for nearly 30 years.

Since 1893 seventeen of the most active, intelligent and worthy members of the society were bought off by Mr. Duss, accepting money and real estate ranging from $4,000 upward, and since 1890 eighteen members have died, while on the other hand, since Mr. Duss became Junior and afterwards Senior Trustee, *not a single new member has been admitted, but one,* with the result that *he and the decrepit Gillman alone remain as the male* members of a society once having an active membership of *several hundred;* which formerly filled the large town of Economy with its hundreds of houses and many streets. Now the remnant will scarcely fill the rooms in the Great House.

Members selling while Duss was Senior Trustee.		Members dying since 1890.
Hugo Miller, March 8, 1893....	$5,000	John Worth,
Bertha Geratch, Mar. 29, 1893.	3,600	——— Kirschbaum,
Julius Stickel, March 29, 1893..		John Lenz,
Paulina Stickel, Mar. 29, 1893.		E. Woelfel,
[Personal property in addition.]		
Jacob Nicklaus, May 5, 1893....	5,000	M. Staib,
*Henry Feucht, May 16, 1893 . .	5,600	H. Fischern,
Margaret Feucht, May 16, 1893.	5,600	J. Henrici,
Benj. Feucht, May 16, 1893....	5,600	G. Lauppe,
Rebecca Feucht, May 16, 1893..	5,600	J. Scheib,
Tirza Feucht, May 16, 1893....	5,600	E. Beck,
Sig. Stiefvater, May 17, 1893...	5,000	D. Hoerer,
M. J. Fredericks, June 5, 1893..	5,000	S. Wolfangel,
B. Platz, June 9, 1893.....	5,000	C. Hermansdoerfer,
Christina Hoerer, June 23, 1893	5,000	M. Diem,
Leonhard Hoerer, June 23, 1893.		P. L. Wolfangel,
Eliza Sieber, June 29, 1893.....	4,000	R. Lautenschlager,
Samuel Sieber, July 6, 1893....	1,000	G. Riethmueller,
		E. Kellerman,
		Fredericka Muntz.

*[In addition to about $30,000 of real estate.]

This society is recognized as a "community" in the Articles of 1805; of 1821; of 1827; of 1836. It is styled an "association" in those of 1847; of 1890, 1892 and 1894.

Is it not farcical to call these eight surviving persons—acting as a depleted Board of Elders and a Board of Trustees, with no membership to govern or control—in number not exceeding an average family—to call these a "community"—an "association," a "society"?

No Power of Formal Dissolution.

The most careful scrutiny of the articles, constitution or agreements of the Harmony Society, will fail to disclose any power in the membership, or in the trustees as trustees, or as officers, or in the Board of Elders, to voluntarily formally dissolve the Harmony Society. The members are mere recipients during life, of certain provisions for their support and maintenance; they have no vot-

ing power, no right to demand an accounting; no voice in the dispositions of the income, or control over the same in any manner, nor in the selection of elders or trustees. As compared with the perpetual life of the society as contemplated, the members are transients only; the death of a member has no effect upon the society in any manner. They, then, have no power to dissolve the society of their own motion.

The trustees so far as they hold the property in trust, have no power given them to terminate the life of the society, or alter or vary the terms of the trust, or to divert the trust funds.

Neither are the Board of Elders or the Board of Trustees, as managers, superintendents, or general agents, vested with any power of dissolution. Their powers are expressly restricted to the preservation, management and control of a *living* society; they *maintain*, they have no granted power or right to *destroy*.

The position of the master that a dissolution must be by consent of *all* the members, or an abandonment of principles by *all* the members, is not sound, because it concedes a power not granted to them; and because it concedes a title to the trust property in them, in violation of the terms of the trust created for the society.

The trusts are expressly limited to "the benefit and use" of the *society*, and not of its members.

Dissolution of the society is, therefore, something which may be *encountered*. The state of facts which have terminated the life of the society may have been the result of wrongful acts of the patriarchy, or even of the members; a perversion of the property, the impairment of the joint and indivisible stock, the willful permission of immoral conduct, surrender of the prescribed form of government, absolute inability to accomplish the purposes and principles for which the society was founded, and of many other conditions of affairs.

When the *facts* which have caused this dissolution, do occur, here remain then only liquidation and distribution of the prop-rty. But neither the trustees nor the Board of Elders are given ny power of liquidation or distribution. If they do so act, it is ıot because they are acting in the pursuance of the duties of their ffice as prescribed by the articles, but they do so as *trustees in heir own wrong*. Their sole duty, then, is to seek judicial au-ıority, especially because the rights of *all* interested in the joint nd indivisible stock *vested* at the moment of dissolution.

Our position we respectfully submit, is unassailable, if it be onceded, as it has been by the Court below, that the grants in rust do not create a joint tenancy with right of survivorship in he members, as members. Because when the society dies, it no ɔnger can support the trusts, and the property must revert by ʏay of resulting trust to those who are equally interested in the joint and indivisible stock," which is the *corpus* of the trust; ıose who are living, and the heirs and legal representatives of ıose who are dead. And they not *as* members, but because hav-ıg been and being members, they were the donors of the prop-rty to the trust.

Not merely is the position of the master unwarranted by the ticles of the society, but it might result in John S. Duss, as sole rvivor, wandering on the face of the earth, in two capacities, ıe as an unincorporated association—the sole beneficiary of a ust, of which he is the sole trustee; and the other as an ordi-ry individual citizen. As a society, *he* does not die; his trust operty cannot be taken to pay his individual debts. According the master, the law would be quite unable to mix Duss as a *ciety*, with Duss as an *individual*, because, he reasons, the so-ty is legal, the trusts created violate no law, and nobody can that the society is dissolved, unless all the members *consent*. ıd Duss may not consent!

s it possible that the master can be sustained in his other po-on, that there is no dissolution or abandonment of principles ess *all* have abandoned these principles? If so, the Board of lers and the trustees may convert the town into a free-love so-

ciety, and permit conduct violative of all decency and sobriety, diametrically opposed to every principle and purpose recognized by the articles, and still survive as a society, if all have not participated in the formal decision of abandonment.

The society is a "shadow, not a substantial thing"! Utterly bereft of virility, with no membership; absolutely incapable of performing any of the obligations of a patriarchal communistic society, is it to be said that the mere garment which garbs the skeleton is the society of the constitution, the beneficiary of the trust, because of its own motion the skeleton has not discarded its robes?

Having shown that the articles constituting the constitutions of the Harmony Society do not vest in the members as members, or the Board of Trustees, or in the Board of Elders, or in the combination of all, any power voluntarily to formally dissolve the association, can there be any question of the power or jurisdiction of a Court of Equity to ascertain whether acts have been committed, or whether acts have been permitted which in point of fact are contrary to the purposes and principles of the society and which necessarily, therefore, create a condition of dissolution?

It is unnecessary for us to quite authorities to establish the jurisdiction of this Court over an unincorporated association. It is conceded by the master and is conceded by the Court below.

XIII.

PARTITIONS OF TRUST PROPERTIES.

In pursuing his scheme to become vested by survivorship with all this vast property, Duss had to deal with two classes of members, viz.:

Those whose ages and infirmities gave probable indication of speedy removal by death;

Those whose comparative youth and robustness of health affected materially his chances of surviving them.

In the former class are the present living persons:

Christina, Rall, aged 77 years,
Barbara Boesch, aged 80 years,
Franz Gillman, aged 70 years,
Katrina Nagel, aged 58 years,
Karoline Molt, aged 54 years,
Mrs. Hermansdoerfer, aged 47 years.

Some of these may be dead already; the record does not disclose it.

These can be maintained at very slight expense for the remainder of their lives.

Those composing the second class could be got rid of only by purchase. Accordingly a form of conveyance was prepared, which was used substantially in every case of purchase, except in the case of Hugo Miller, and negotiations were entered upon.

These deeds are printed in the Record, pp. 232 to 246, and are numbered Exhibit No. 1 to 12½, inclusive.

These forms all contain substantially the following:

"And in full knowledge of the fact that said society "owns in addition to the property at Economy and "Leetsdale, several thousand acres of land in Michigan "and in Warren, Pa.; also certain tracts of land in Al- "legheny County, Pa.; also stocks and bonds in various "railroads, mining, manufacturing and bridge compan- "ies, to *nominal amount of several hundred thousand* "*dollars;* also various judgments, mortgages and unsold

"lots in Beaver Falls and New Brighton, of the nomi-
"nal value of several hundred thousand dollars; also
"that while it may be possible that the said society may
"have a large amount of property after payment of its
"debts, I am entirely satisfied to *accept as my full share*
"*and interest therein* said (five thousand) dollars, *and I*
"*will never hereafter make any claim for any sum what-*
"*ever, nor for the delivery of any other property of said*
"*society to me, no matter what may be the value of the*
"*property and assets of said society after payment of its*
"*debts.*" * * * * *

Not merely this, but the deeds of the Feuchts and the Stickels —some eight signers (Exhibit 10, p. 961; Exhibit 12½, p. 965)—*fix the probable surplus after payment of debts as follows*: "And that said society may have property worth *several hundred thousand dollars left after the payment of its debts and liabilities.*

The master continually speaks of these transactions as *withdrawal of members.* He is certainly not justified therein by any proper construction of the terms of these deeds.

The transactions were virtually a setting aside of the shares of each of the selling members in the entire property of the trusts. Thus the assets are specifically mentioned, viz.:

Economy Lands.
Leetsdale Lands.
Michigan Lands.
Warren Co. Lands.
Allegheny Co. Lands.
Stocks, Bonds, several hundred thousand dollars.
Judgments, Mortgages.
Unsold Lots, several hundred thousand dollars.

The equities of these after paying debts, may be, it is said, a large amount; in two the equity is fixed at several hundred thousand dollars.

Having thus before them the property in which they are interested, the selling members fix each the value of his own interest, generally $5,000, and then each agrees to accept the sum named:

"As my full share and interest therein."

Is there not here a clear and definite admission that *all* the members held *all* the trust properties in common; an agreement that each of the selling members should withdraw the value of his interest from the trust properties, upon an agreed valuation of that interest?

The value of these interests being paid out of the trust funds, the remaining properties represent only the shares of those members who remain—the remaining portion of the trust fund equals the shares of the remaining members, who elect, however, not to sever their interests then, but to continue to hold their shares in common.

These transactions, then, constitute a *dissolution* of the society, and a liquidation of the interests of all the members, subject to the payment of debts. Assuming there were twenty-six members, each had one twenty-sixth; seventeen severally estimated the value of his 1-26th at $5,000, which was forthwith allotted to him. The remaining nine have the rest of the property for their several 1-26ths, and choose for the present not to sever their interests, but to continue those nine interests in common.

This liquidation was not the *individual* act of Duss, apparently, but the official acts of the Board of Elders. The transactions appear on the minutes.

There can be no question that these transactions were, and were intended to be a winding up of the society.

And it is as equally as clear an admission that the trusts have failed; that the society has ceased to exist; and that the time had come in the estimation of Duss, to take the property into individual possession—paying those who could probably interfere with

him, their shares, and take to himself all the residue, subject only to the very slight burden of supporting six old and infirm people —most of whom are in the shadow of the valley of death.

John S. Duss in his answer (par. 29, p. 45) says he came in December, 1891, in respect to the financial conditions of the society to know that its reputed great wealth was a myth, *and such wealth as it did possess in its then condition was more than equalled by its enormous load of indebtedness.*

He further says that in pursuance of the provisions of the articles of government, wherein it is provided that the trustees shall have and exercise the right to make donations to seceding members as they may deem prudent, "we did *donate* and pay Hugo Miller $5,000; Samuel Sieber $1,000; Jacob Nicklaus $5,000; Blazsius Platz $5,000, and Moritz J. Frederick $5,000."

He further says (pp. 95, 96) that in the exercise of the rights of trustees to make *donations* he paid to the Feucht family $28,000 in cash, $15,150 in lumber and land. He similarly dealt with the Stickels, with Stiefvater, Mrs. Hoerer and her son.

This pretense of a *"donation"* is absurd. A donation is a free gift; the transactions now referred to were purchases for large resulting considerations.

An example of "donation" is Exhibits Nos. 8 and 9 (Record, p. 240). Lena Fritch having on February 14, 1890, resigned her membership, received $95 "to pay my traveling expenses and such like." (Exhibit No. 8.) Father Henrici and Duss (Exhibit 9) also lent her $24 to go to Germany, which she is to return in case her circumstances make it possible.

At this time, October 23, 1890, Duss had no knowledge that the financial condition was bad—he fixes that date December 1, 1891—and yet with all possible indicia of great wealth all around him, he fixes the *donation* at $95.

In 1893, when, as he says and as he *swears*, he knew that the society's wealth was a *myth*—that its wealth was more than equalled by its debts—he buys the interests of these 17 persons at an aggregate of over $85,000, borrows the money on mortgage and swears that the transactions were "donations."

These selling members were admitted to membership and made their sales as follows, viz.:

	Date of Admission.	Date of Sale.
Benj. Feucht, Henry and 3 ladies of that family	Feb. 13, 1890	May 16, 1893
Stickel, wife and Miss Geratch	Feb. 13, 1890	March 29, 1893
Hugo Miller	Feb. 13, 1890	March 8, 1892
Blazsius Platz	Feb. 13, 1890	June 9, 1893
S. Stiefvater	Feb. 13, 1890	May 17, 1893
Samuel Sieber	———, 1892	July 6, 1893
Mrs. Sieber	———, 1892	June 29, 1893
Leonard Hoerer	Mar. 14, 1893	June 23, 1893
Mrs. C. Hoerer	———, 1892	June 23, 1893
Jacob Nicklaus	Jan. 20, 1890	May 5, 1893
M. Fredericks	———, 1889	June 5, 1893

These alleged *"donations"* were made to sixteen persons admited as late as February, 1890. One person, Leonard Hoerer, admitted March 14, 1893, was *"donated"* out within three months.

XIV.

THE UNION COMPANY.

Not only as we have clearly shown has the society, or Duss and the remaining members, abandoned every principle, law and regulation, which constituted the reason of the formation and existence of the society, and for the maintenance of which the financial system was derived and established, but they have

turned over the society and its affairs to a corporation of the second class under the corporation laws of Pennsylvania, authorized to purchase and to sell land.

The duties and the trusts imposed upon and accepted by the Board of Trustees and the Board of Elders, and defined by the Articles of 1847, and a reference to them in this place will be appropriate.

In the preamble, it is narrated, that George Rapp had died thus depriving the members of his Christian fellowship and religious ministry, and his superintendence in their temporal affairs, and that therefore, it has become necessary to the good order and well being of the association that some plan should be agreed upon to regulate its future affairs, promote the general welfare and *preserve and maintain it upon its original basis.*

And therefore, the two boards were constituted. The Articles of 1827 (containing the exposition of principles) and the supplemental Articles of 1836 are solemnly recognized, re-established and continued.

The machinery of the two boards was devised solely to take George Rapp's place, for the purpose of preserving and maintaining the society upon its original basis, and the principles and purposes of the society as shown in the two agreements referred to, and the laws and regulations which Rapp by those articles had authority to enact and enforce.

The duties of the two boards were of a *personal* nature, and could not be delegated.

Thus the Board of Elders had power to remove and appoint superintendents; to take care that members performed the duties assigned to them; to determine all disputes and misunderstand-

ings; to advise; to reprove; to admit new members; to expel, to regulate, maintain and improve the morals of the society; to instruct; to appoint spiritual leaders; to remove members from the board; vacate seats; remove trustees; to fill all vacancies in either board; to choose successors.

The Board of Trustees were to deal, purchase, sue, contract, bargain, and generally to transact all external business.

And all the property is to be deemed *common property* of the society.

The Union Company was incorporated under the provisions of the XVI. section of the Corporation Laws of Pennsylvania, approved the 29th of April, 1874 (Purdon's Digest 406), which provides for the incorporation of

"XVI. Associations for the purchase and sale of Real Estate, "or for holding, leasing and selling real estate * * *."

The capital of such companies is limited to $600,000. (Sec. 35); their Board of Directors and officers are elected by stockholders, and are accountable to the State for taxes, &c.; its stockholders are liable in certain contingencies for certain classes of debts; it may be dissolved by process of Court, and its affairs wound up by judicial decree. Its stock is always subordinated to its debts or losses in the prosecution of its business. The corporation has neither a soul of its own to save, nor has it corporate power to care for the souls of others. It has none of the powers confided by the Articles of 1847 to the Board of Elders and the Board of Trustees. It is not within its power to feed, lodge, maintain and support in health and sickness, nor care for the religious welfare of the members of the Harmony Society, nor perform any of the other duties imposed upon the two boards of the society.

The capital stock of this Company is $400,000. On April 12th, 1894, the trustees, Duss and Riethmueller, conveyed to the Union Company all the lands of the society at Economy, at Beaver

Falls, in Allegheny County; in short, all its real estate everywhere, except land in Ohio, and a few lots at Beaver Falls valued at about $4,000 (Master .)

All of the capital stock was given as consideration to the trustees, viz.: $400,000.

"A shareholder in a corporation has no distinct or individual title to the *moneys* of a corporation; the shares represent a right to participate in profits only."

Bidwell *vs.* Railway Co., 114 Pa., 541.

The trustees have divested themselves of titles in fee, by which they controlled the *corpus*, by sale to a corporation, receiving in return shares which give them no distinct title to the moneys of a corporation, but gives them only the right to participate in profits which such corporation may make, if profits be made.

At any rate by these conveyances, the trustees have divested themselves of every foot of their real estate; the members have not a roof over their heads. As Duss says they are tenants at will of the Union Company.

This transaction is not merely a direct act of liquidation; it is in flat defiance and violation of the trusts imposed upon these trustees.

The articles (Exhibit "H," page 247) confesses the liquidation and assigns the insolvency of the society as its cause, as follows:

1st. This present suit was threatened, to recover large sums of money alleged to be due to heirs of deceased members, which the paper declares they believe to be unfounded.

Of course, this is a confession of a fraudulent conveyance in-

tended to defeat any recovery by such heirs, if they should be held entitled in such suit.

2nd. It had become necessary for the society to obtain money to pay its debts, either by borrowing and giving security, or by selling the lands of the society and thereby get cash for the payment of said indebtedness.

This concedes debts beyond the *income* of the society; the necessity for depleting its "joint and indivisible stock," and it also admits that the transaction was to be a transaction of *sale*.

3rd. That the lands can be better managed and made more available for collateral purposes; more satisfactory titles can be given if first conveyed to an incorporated company; and *also avoid inconvenience and trouble that may arise from time to time by change of trustees.*

4th. Therefore, authority given to "forthwith *sell, transfer and convey* to the *Union Company*, all its lands in Beaver and Allegheny Counties."

This sale comprises all its Pennsylvania lands.

Duss assigns other reasons in his testimony, viz.:—to avoid an *escheat;* as to the property of the society "*out of sight out of mind,*" and therefore the transaction was a good one.

They pretend also that this corporation is a substitute for the Harmony Society; in short that the Harmony Society is now the Union Company. Whether so intended or not, the sale of the

Union Company tends to hinder, delay and defraud any creditor of the Harmony Society who may procure judgment against it.

Not an industry is carried on in Economy by the society since this sale, no matter what the master says. Every house, mill, shop, field, oil well and gas well is owned by the Union Company; and all are occupied, when occupied, and operated by tenants, be they at will or otherwise, and by lessees of the Union Company.

John S. Duss, as president of the Union Company, is in possession of the lands and tenements of the company, conveyed to it by John S. Duss, trustee, in flat violation of his trust, and in liquidation of debts and for other fraudulent purposes. As such president he doubtless receives a salary for services, which as trustee he could not lawfully exact. He has by this act absolutely blotted out the Board of Elders, and deprived them of their right to the exclusive management of internal affairs of the society, and he has blotted out his own trusteeship; and he as president of a corporation for profit and a Board of Directors composed almost exclusively of non-members of the society, have exclusive ownership and control of all the trust property.

Franz Gillman is the only male member of the society, beside Duss, and Gillman is an imbecile, so that the directory is necessarily composed of non-members, except as to Duss.

The Board of Trustees have no power of liquidation conferred upon them by the Articles of 1847. The power of liquidation—the conversion of trust property for paying debts is never implied as existing in a trustee, or a Board of Directors. When a company can no longer pay its debts as they mature, the company is insolvent; the directors cease to be directors, and hold the assets in a new relation, until the process of law is put into operation. The Board of Trustees are entrusted to *manage and preserve the corpus* of the property of the company, to sell, to buy, but not to *deplete* the property in their character of trustees. If their operations prove disastrous, their powers as trustees cease and they

bear a new relation—and that only to put into operation an official process of liquidation.

It will be contended that in as much as the Articles of 1847 give power to the trustees to sell all or any part of the property of the company, they had the power to *sell all* the property to the Union Company.

In this there is error. All the property granted by those articles were for a "going" concern, and for the purpose of keeping it going; to carry into successful results the principles of the society, and to maintain in existence and in the exercise of their functions the Board of Elders and the Board of Trustees. It is an astonishing proposition that the articles which create a system and prescribes powers to keep that system in successful operation may be construed to justify a *destruction* of that system, and a complete demolition of its two boards, and of the duties imposed upon them.

Besides, a power of sale, no matter how large, will never be construed to include the sale of all the property necessary for existence, and a conversion into an entirely hostile and distinct enterprise.

The law bearing upon this question is the same law applicable to Boards of Directors of corporations.

Morriwetz on Private Corporations (Sec. 239) says:

> "A Board of Directors have no implied authority to "make a material and permanent alteration of the *busi-*"*ness or constitution* of a corporation, even though the "alteration be within the company's chartered powers."

And (Sec. 240) that the directors of a corporation have no im-

plied *authority to wind up the company,* or to sell any property which is necessary to carry on its business.

The trustees have not the power or authority to *change the business, the mode of government, or the machinery already adopted* to maintain and carry out the principles of the society; and in so doing they have destroyed the society, and terminated its existence.

It is also contended that every living member of the society signed Exhibit "H," dated April 11th, 1894, authorizing this sale to the Union Company, and that in so doing they made lawful the transaction of sale to the Union Company, and *that being the sole surviving members they had full power so to do.*

This contention necessarily assumes:

1st. That the constitutions of the society provided for a joint tenancy with a right of survivorship; or

2nd. That if there was no survivorship provided by the constitutions, the society itself remaining a society in April 11th, 1894, had a right to so deplete the property, or change its character, and destroy its system, and to substitute foreign and alien modes, motives and systems, so that when the society really died, the changed conditions of property would be substituted in distribution among all those entitled, next of kin of members dying in the society since 1836, included.

As to the first assumption that the surviving members of 1894 could do what they pleased as sole owners by survivorship, we can add nothing to what we have heretofore presented, viz.: That none of the articles contemplated the *death of the society* in any form, or made any provision for tontine;—and that neither can be presumed in the absence of express provision; and that, there-

fore, there is no survivorship or tontine. If we are correct in this the first assumption falls.

As to the second assumption, that independently of right by survivorship, the society still existed *as a society*, and that during its existence, it has power to fundamentally change the purposes and systems, and to convert the property of a society *founded for distinctly expressed purposes into stockholders* of a real estate corporation, the best answer we can make is to state it.

In this view, the membership are as much bound to maintain the principles, preserve the property, and be governed by the systems of 1847 as the trustees are. They cannot validly authorize the trustees to violate their trust; for all the rights of the living members are comprised in *enjoyment and use*, and in the preservation of the corpus for distribution among those the law directs, when the time for distribution comes.

The members under the Articles of 1847 had no right to *change* anything. Nothing was reserved to them. They had no power to vote, no power to change the boards, to enlarge, to reduce their powers, to authorize them to do this, or forbid them to do that other. The Board of Elders was *self-perpetuating*, and the Board of Trustees was dependent for life on the Board of Elders. The members were only mere serfs, to work cheerfully with their hands as the boards directed. And in Signing the Articles of 1847, they forever obliterated themselves from any semblance of right or power to change trustees or elders, to authorize the trustees to do or not to do; to enlarge powers; to reduce powers; to ratify. And if the agreement of 1894 is to be read as though it was the resolution of the Board of Elders or Trustees, it is affected with the same vice—a vital lack of power to modify, change or alter the Articles of 1847, or to enlarge, reduce or destroy the trusts therein provided for.

The appellees must therefore absolutely depend on the Articles

of 1847 for the power of the trustees to sell these lands to the Union Company. When we look at these articles or any preceding articles, to find what rights or powers the members as such have reserved to themselves, we will find nothing. They are emasculated; they have deprived themselves of every vestige of power or authority or right except to *labor and labor cheerfully and to obey cheerfully, and to waive wages, and accept only board, lodging and clothing, care in sickness, etc.*

Such powers cannot exist in the members as such, without destroying the articles, and establishing some other system which perhaps ought to be, but is not.

In short the system is an abhorrent one—a system of slavery intolerable in a free land, and should be mercilessly condemned.

But there these articles are, and it is impossible to import into them any authority in the members as such; to give different direction to the powers of the trustees, from that provided by the Articles of 1847, unless the appellees can succeed in convincing the Court, that the constitutions provide for a joint tenancy with right of survivorship, or tontineism in the members.

If it be seriously contended that death of a member in the society leaves no descendible interest to his heirs or next of kin in the property of the society, the interest of each member therein is reduced to a life tenure only. When one dies he simply steps out, and the remaining members continue such life interests until they die.

And then, that being the case, a life tenant, or one whose interest in the property is but for life, cannot by *his act* interfere with the disposition of the fee held by trustees for the society as a whole. And hence all the members signing the Articles of 1894, having only *life enjoyment* cannot by a *united act* control the uses, dispositions and purposes covered by the trusts, so as to divert them from the conditions imposed upon them; especially

to the prejudice of those who have legal rights in distribution protected by the agreements of 1836, and the trusts of 1847.

The master contends that the transaction of sale to the Union Company, was not entered into with intent to liquidate or to dissolve the society thereby, and as the members and trustee did not *form an* intention to dissolve thereby, the society is not dissolved, notwithstanding that sale.

The question of intention has nothing to do with the condition; an actual dissolution is a necessary consequence of acts done, and cannot be defeated because the actor did not intend that consequence.

A man is presumed to intend the natural consequences of his act; those natural consequences prove the intent.

The master certainly can find nothing in Exhibit "H" (the Articles of 1894) to support his conclusion that there was no intent to dissolve. The fact that the trustees resorted to the *members* for an authority, shows an intent to resort to the original elements, consistent only with a radical change destructive of the society. Then the confession of insolvency contained therein also. And these articles of the 11th of April, 1894, are immediately followed by a deed dated April 12th, 1894, to the Union Company—the day after.

The company had been already organized; the deeds had already been prepared, and the very next day the corporation stepped in, and the Board of Elders and the Board of Trustees stepped down and out.

The Union Company is the practical liquidator of the affairs of the Harmony Society to-day.

We give a summary of Exhibit "H" (Record, p. 247), dated April 11, 1894:

They recite a large indebtedness, payment of part of which may be called at any day; that this suit is threatened; and therefore it becomes necessary in order to obtain money to pay debts, "either to borrow money and give security," or sell the lands of the society, *and thereby obtain cash for the payment of said indebtedness;* that the lands can be better managed and made more available as collateral and more satisfactory titles given, if first conveyed to an incorporated company, *to be thereafter managed, sold, disposed of, by and in the name of such company.*

> "And also avoiding thereby inconvenience and trouble
> "that may arise from time to time by change of trustees
> "by death or otherwise."

Therefore sale authorized to the Union Company of

> "All lands now owned and held by said trustees for
> "the benefit of the said society to the end that all said
> "lands, tenements and hereditaments may be owned,
> "held and managed by said incorporated company, and
> "be sold and otherwise disposed of from time to time in
> "pursuance of proper corporate action as *may be de-*
> *"termined by the directors and officers of said incor-*
> *"porated company."*

The capital stock of said incorporated company, however, to be owned and held by the trustees in accordance with the articles of association to the amount of $397,500 out of a total capital of $400,000.

What else can this be but liquidation and death?

The trustees get certificates of stock, which may or may not be dividend paying. The profits, the money, the corpus belong to the incorporated company, not to the *trustees.* The latter have deposed themselves, and have delegated their trust to the officers

and directors of the incorporated company, every one of whom, except Duss, is a stranger to the society.

The trust fund is burdened with State dues and taxes; the corporation is subject to State control, and over and above all, the corporation has no corporate right to act as manager or trustee for any other persons.

In the most optimistic way this transaction can be considered, how are the members of the society to be housed, fed, clothed, and nourished in sickness and age, out of dividends on stock not earned nor declared?

Duss, trustee, is Duss, president of the corporation; he at least is strictly in it.

The property conveyed to the Union Company is worth at the very lowest figure $4,000,000. The consideration given to the trustees is $395,000 in stock. Who is to control the enormous profit of the corporation—who, but Duss? Where comes in the control of the Board of Elders? And who are the elders, except one imbecile man, and ignorant, incompetent, non-English speaking old German peasant women.

The preamble, reciting the indebtedness and the necessity for raising cash, is a mere blind, a pretense, and is not founded on fact. This paper "H" was signed April 11, 1894.

The master finds that $1,002,731.62—every dollar of the liability to the bank, had been paid off January 1, 1894, four months before the date of this Exhibit "H." (Record, page 129, M. R.) The trustees got not one dollar or cent from the Union Company. On the contrary the master finds that the trustees actually loaned to the Union Company $119,740.43 (M. R., Record, p. 134). The trustees had also unsold bonds and stocks to the amount of $352,-

000 (Record, p. 134), together with this domain, and the trustees had but a short time before paid $86,870.42 to selling members for their interests in the society (Record, p. 134).

And where would the Union Company get any money to pay the trustees? All its capital was exhausted and gone to the trustee, Duss—and therefore it had no means left. The very money loaned by Duss, $119,000, was applied to paying the second mortgage and $50,000 on the first mortgage. These mortgages were assumed by the Union Company as its own debt without a dollar in its treasury to meet them. Of the first mortgage $350,000 remains unpaid—a first lien, and the title to all the equity rests in the Union Company.

The master seems to hold that the Union Company is the Harmony Society. How can this be within the charter of the Union Company?

If he be right, then the Harmony Society cannot be living. The duties of the Board of Elders and the trustees have vested in an extraneous corporate Board of Directors. That board consists of five persons. The Board of Elders is nine. The discretion and power of dealing with the property of the trust has passed from the trustees of the society to the Board of Directors. What contract has, or what contract can the Union Company assume to support and maintain the members, or to fulfill the obligations imposed upon the Board of Elders and the Board of Trustees?

We submit with confidence these propositions:

That the transaction of sale to the Union Company was in violation of the trusts, was an abandonment of the purposes of the society, and an act of liquidation consequent upon an actual dissolution. The assent of members in paper "H" was an express acknowledgement of dissolution.

That if the Union Company be the Harmony Society in another name, the form of government provided by the act of 1847 is destroyed; the Union Company in so acting is also acting *ultra vires.*

That if the master be right in so regarding the status of the Union Company, then the trustees have made a voluntary assignment to the Union Company, and the Union Company is the voluntary assignee to convert the property of the society by sales, to pay the mortgage debts, furnish money for payment of other debts, and to account to the trustees for the surplus remaining. The testimony shows that no rents are charged by the Union Company to the trustees, the later being, as Duss terms it, tenants at will. And the Union Company gave the trustees leases of all the Economy lands, &c., from April, 1894, to April, 1895, without rent, the trustees to pay the taxes.

And the assignment is made to a company with no power to so act. The transaction however is a recognition of the failure of the trusts and of the society, and is the declaration of an abandonment of the purposes and principles of the association.

XV.

Even if he held that the society has not yet terminated its existence, as we think we have clearly shown, yet the trusts are void in themselves, for the following reasons:

SOCIETY AGAINST PUBLIC POLICY.

The society having its existence for the maintenance of these principles and purposes, is *obnoxious to the policy of the law;* and a trust to support and maintain them, *is for that reason void;* and the property held therefore passes by way of resulting trust to the classes hereinbefore specified.

In the first place, the jurisdiction of the patriarchy extends to municipal control, in a manner vitally different from and antagonistic to the constitutional system of the State respecting communities. Thus, the exercise of the franchise; of the right of naturalization; of participation in national, State and local affairs, and of the right of a voice in the periodical election of municipal officers—indeed, all civil rights is taken away from the individual and is vested in the patriarch. All individual rights are merged into the community.

As there can be no *individual* wealth, there can be no individual contracting; nor can there be any executionary response for individual liabilities. All the private property which might result from individual labor is vested in the community, and the member is left for protection to the will of the patriarch.

The most solemn obligations of civil duty of the individual is controlled by the will and regulation of the patriarch.

The scheme involves a system of labor which, if successfully carried out, involves a disastrous competition against free labor; for the member is to work without payment, beyond his lodging, board and maintenance. Its effect, if practiced to the full extent, is as disastrous to free labor as negro slavery proved to be.

The members are concreted into an individual designated as a "Community," and hence they are not equal before the law; nor are they free, nor does their situation at all bring them within the declarations which are the foundations of the government.

As the constitutions of the society make no provisions for a termination of its life, it follows that if the scheme should for long periods prove successful, the society would absorb to itself vast amounts of money withdrawn from the community at large, and held as for a perpetual life, thus exempting itself from the common lot of individuals in the event of death, by way of distribution among those entitled; a defeat of collateral inheritance taxes, and all the other duties and successions and obligations of the ordinary citizen.

The inevitable result of the scheme is the aggrandizement of those in power, and the debasement of the membership in ordinary.

Judge Grier, in the Nachtrieb case hereinbefore referred to, describes the system as an
"isolated condition of a community, whose moral and intellectual "energies are studiously kept in a state of torpor and inertness; with "undefined social rights, and an administrative power limited by no "written rules, and with matrimonial restrictions contrary to the "policy of the law."

A community of persons, isolated and differentiated in all the functions of civil life, is against the policy of the law; the doctrine and practice of celibacy and non-intercourse of married persons are against the policy of the law; community of goods is socialistic and antagonistic to the system of distribution of estates and is against the policy of the law.

At the time of the inception of this association the laws of Pennsylvania did not recognize the purposes and principles which underlie its existence as proper to be enfranchised with corporate powers.

When the system of incorporation was extended by the corpora-

tion laws of 1864 to almost every form of association, the Legislature did not deem it proper to extend its franchise to such a corporation.

And so, also, the corporation laws of 1874, broad and full as they are, provide no clause or paragraph under which such an association could claim corporate privileges and franchises.

Fancy an application for a charter to the Legislature for this association, asking corporate powers to establish a patriarchal municipality with community of property, a membership of serfs bound to lifelong labor without recompense, except as to bare existence, and barred from rebellion by forfeiture of the proceeds of that labor; withdrawing estates from recognized political control, forbidding matrimony, defeating the laws of inheritance; for a society for perpetual accumulations in itself as an entity; a power of making laws and regulations; a tying-up of property forever, and an absolute taking away of the individuation of its members!

Can it be, then, in these circumstances that individuals can, by their own volition, establish a community with all the attributes of corporate power for such purposes, and successfully maintain that courts shall recognize the monstrosity thus conceived and born?

Under the constitutions, or whatever the agreements may be called, the individual members had no assignable shares of stock; they are mere incidents; they live, they die, the society goes on. It concentrates in itself the unlimited wealth which individual contributions and individual labor pour into its coffers, so that it may well be, should the scheme be continuously successful, and should the society have the perpetual life contemplated, its numbers would be overflowing, its wealth enormous, its members, deprived of matrimony, would cease to add to the population of the State; its enslaved labor be a successful competitor of paid labor, and its membership an assemblage of monks and nuns.

And for the foregoing and many kindred reasons, which need not be elaborated, the trust, however validly constituted itself, must

be defeated because of the badness of the purposes for the benefit, support and maintenance of which it was created.

XVI.

THE SOCIETY NOT COMPETENT TO HOLD PROPERTY.

Conceding for the sake of the argument that the principles, purposes and scheme of government of the Harmony Society are not against public policy, and that they are unobjectionable in themselves, yet we contend:

First. That the Harmony Society is an unincorporated association; that it is an organization neither for a religious, charitable, literary or scientific purpose, and therefore it is incapable of holding property in its own name.

Second. That a trust created for its benefit and use is invalid.

Even if it be held that the Harmony Society can validly hold property in its own name, or through trustees for its use and benefit we contend:

That the trusts for this society violate the rule against perpetuities and are therefore void.

If it should be held that the rule against perpetuities has not been so violated we then contend:

First. That the grants are in the nature of base or conditional fees, reverting to the donors and their heirs upon the failure of the purposes of the trust by way of resulting trust.

Second. That the society has come to an end and no longer lives, and therefore the properties covered by the trust reverts to the donors, or their heirs or legal representatives.

THE MASTER'S POSITIONS ARE:

1st. It is conceded that the society is an unincorporated association;

2nd. But that the trusts, while they are for the "benefit and use of the community," do not designate any particular purpose to which the property may be devoted;

3rd. That the property may be held indefinitely, but if of advantage to the society, it may be sold;

4th. And therefore the trusts do not violate the rule against perpetuities;

5th. That notwithstanding its want of incorporation the socity may be *cestui que* trust of personal property;

6th. That while it cannot take title to real property in its society name, property may be held for its use and benefit by trustees and its right to the enjoyment of property be secured in that way;

7th. That the trusts do not constitute an estate upon a condition subsequent, or a base fee, because the words in the conveyance do not of themselves create a condition, nor are so connected with the grant as to qualify or restrain it.

As we have said, it is conceded that the Harmony Society is an unincorporated association.

It is also conceded that the terms of the trust are absolute; the uses of the property are not limited to any religious, charitable, literary or scientific purpose.

The only limitation expressed in the terms of the trust is *"for the use and benefit of the society."* That, of course, means for the maintenance, support and continuance of a community organized for the purposes set out in the constitutions.

None of these purposes come within the class of purposes which are defined by the law to render an unincorporated association capable of holding property through trustees. They are neither religious, charitable, literary or scientific purposes.

Neither do any of the conveyances denote that the property held in trust is to be donated to a religious, charitable, literary or scientific purpose.

In the case of Kain *vs.* Gibboney, 101 United States Rep., 362, Strong, J., delivering the opinion, says in discussing the will in that case:

> "A 'charity' is generally defined as a 'gift for a public "use.' Such is its legal meaning, and here the bene- "ficial interest is given to a religious community."

In the case at bar, the purposes of the Harmony Society are defined once and forever, since by the Articles of 1827, and those purposes are:

> "WHEREAS, By the favor of Divine Providence, an as- "sociation or community has been formed by George Rapp "and many others, upon the basis of Christian fellowship, "the principles of which being faithfully derived from "the sacred Scriptures, include the government of the "patriarchal age, united to the community of property, "adopted in the days of the apostles, and wherein the "single object sought is to approximate, so far as human "imperfection may allow, the fulfillment of the law of "God, by the exercises of those affections and the practice "of those virtues which are essential to the happiness of "man in time and throughout eternity."

Then follow the mode of government, the gift of lands, tenements, goods, chattels, money or debts due, belonging to the mem-

ber, in possession, or in remainder, or in reversion, or in expectancy as a free gift or donation *"for the benefit and use of the said association or community."*

The community is simply communistic, where the members, distinguished from the patriarch, or patriarchy, are serfs; trading their labor for a bare maintenance, by virtue of a covenant which could never be enforced against the community as an entity; where the sole power is vested in the government over body, raiment, lodging, food, by-laws and regulations not defined nor limited by any fundamental limitation—and includes the power of expulsion.

It is invariably held that an unincorporateed association is incapable of taking by gift or grant.

Town of Paulet *vs.* Clark, 9 Cranch, 292.
Vidal *vs.* Girard, 2 Howard, 127.
Ingles *vs.* Trustees of Snug Harbor, 3 Peters, 144.
Ould *vs.* Washington Hospital, 95 U. S., 303.

The gifts or grants in the case at bar contained no direction for a future incorporation, and therefore is not saved by the case of Ingles *vs.* Trustees of Snug Harbor (3 Peters, 144), in which case the devise was to trustees to erect a hospital, and directed the trustees to apply to the Legislature for an act of incorporation, which was done. The Court held the devise good, because of that, and distinguishes the case of the Baptist Association *vs.* Hart's Executors (4 Wheaton, 27), on that ground.

In the case just cited from Wheaton, the Court held: "That the association not being incorporated at the testator's decease could could not take this as a society."

In the Girard will case (2 Howard, 127), the Court said:

> "The donees were an unincorporated association, which "had no legal capacity to take and hold the donation in "succession for the purpose of the trust."

A *grant to trustees* for a mere voluntary association is void.

Hornbeck, *vs.* Westbrook, 9 Johnson, 73.
Jackson *vs.* Cory, 8 Johnson, 385.
Sloan *vs.* McConahey, 4 Ohio, 157.
German Association *vs.* Scholler, 10 Minn., 331.
Thomas *vs.* Marshfield, 10 Pickering, 364.
Sanderson *vs.* White, 18 Pickering, 328.

This doctrine applies with full force where the gift is wholly of personal estate.

Norice *vs.* Bishop of Durham, 10 Vesey (1805).
1 Ames on Trusts, 214.

We submit that under the authorities cited, the trusts sought to be created are void, and that the property reverts to all who were within ownership and entitled as inheritors of those members who have died in the society since 1836.

The master cites (p. 187) several authorities, which, it is claimed, sustain his positions, that

> "Although a voluntary, unincorporated association "cannot take title to real property in their society name, "as they are not in law recognized as persons, it may "be held for their use and benefit by trustees, and their "right to the enjoyment of the property be secured in that "way."

It will be found upon examination, that not one of them deals with an unincorporated association, having no religious, charitable, literary or scientific purpose. And therefore do not apply to the case at bar.

And in this view it is sustained by authority:

The case of Kain *vs.* Gibbony, 101 U. S., 362, cited by the defendant's counsel, held void a gift by will to "Richard V. Wheelan, Bishop of Wheeling, or to his successor in said dignity, upon a trust that in the event the testatrix should afterwards become a member of any of the religious communities attached to the Roman Catholic Church, and remain so at the time of her death, the said Wheelan, Bishop, and his successor in said dignity was constituted a trustee for the benefit of the community of which the testatrix might be a member. The said property or money to be expended by the said trustee for the use and benefit of said community." The testatrix became a member of the community known as the Sisters of St. Joseph which was unincorporated.

Justice Strong held, among other things, as follows:

> "That is an *unincorporated association,* and it is the "association as such and not the individual members who "composed it when the testatrix died, which is declared "to be the beneficiary. * * * * Its members must be con- "stantly changing, and it must always be uncertain who "may be its members at any given time. No member "can assert claim on individual benefits from the bequest, "or assert that she is a *cestui que* trust; and the com- "munity having no *legal* existence, can never have stand- "*ing in Court to call a trustee to account.* This bequest "is, therefore, plainly invalid unless it can be supported "as a charity, and it is far from evident that it is a gift of "charitable uses. It looks more like private bounty. "Charity is generally defined as a gift for a public use. "Such is its legal meaning, and here the beneficial inter- "est is given to a religious community, but not declared to "be for religious uses. There is nothing in the will to "show that aid to the poor or aid to learning, or aid to "religious or to any humane object was intended."

A most important and an analagous case is the case of Martha Hopkins *et al.*, appellants, *vs.* William H. Grimshaw, decided by the Supreme Court of the United States, at 165 U. S. R., 342, which arose upon a Bill in Equity by all the heirs of Stepheny Forest, and by Horace S. Cummings, trustee, against another heir, and Wil-

liam H. Grimshaw to enforce a resulting trust in, and to obtain partition of land conveyed by Forest and Redden and others to trustees for the Union Beneficial Society of Washington for a burial ground.

The society was unincorporated under written articles prescribing its purposes.

The land was used for many years for burial purposes.

All the trustees named as grantees being dead, Grimshaw obtained conveyance from Mrs. Forest and her daughter; Mrs. Brooks, her mother-in-law; from Wells, president of the society, and from the heirs of the grantee trustees.

Grimshaw then procured from the Board of Health leave to exhume the bodies, which he did.

The Supreme Court of the District of Columbia dismissed the bill without prejudice to the rights of the plaintiffs to claim such right, if any, as Stepheny Forest may have been entitled to in the real estate, as a member of the society.

The Supreme Court of the United States, Mr. Justice Gray delivering the opinion, held:

> "The first inquiry which naturally arises is whether the "deed was for a charitable use in the legal sense. If it "was, the conveyance would not be open to any legal ob- "jection by reason of the length of time during which "the trust might last, or because the society named not "being a corporation. Ould *vs.* Washington Hospital, 95 U. S., 303, Russell *vs.* Allen, 107 U. S., 163, 171. "And the trustees, although the deed did not in terms "run to their heirs and assigns, would take the legal es- "tate. Russell *vs.* Allen, above cited; Potter *vs.* Couch, "141 U. S., 296, 309; Easterbrook *vs.* Tillinghast, 5 "Gray, 17, 21."

The Court proceeds to declare that the burial ground of this society cannot be held to be a public charitable use:

> "But the trust was restricted, in plain and unequivocal "terms, to the particular society to be benefited, as well "as to the purpose of a burial ground, adding (as if to put "the matter beyond doubt), 'and for no other purpose "whatever.' The trust would end, therefore, at the latest, "when the land ceased to be used as a burial ground, and "the society was dissolved. Easterbrook *vs.* Tillinghast, "above cited; Reed *vs.* Stouffer, 56 Md., 236, 254; Second

"Universalist Society *vs.* Dugan, 65 Md., 460; *In re* "Rymer (1895-7, 1 Ch., 19, 31, 32). * * *

"In the case at bar the trust created by the deed hav-"ing been terminated according to its express provisions, "by the land ceasing to be used as a burial ground, and "the dissolution and extinction of the society for whose "benefit the grant was made, there arises, by a familiar "principle of equity jurisprudence, a resulting trust to "the grantor and his heirs, whether his conveyance was "by way of gift, or for valuable consideration."

In our case the purposes of the trusts are exclusive of every other than for the benefit and use of the society in the maintenance of its principles as declared by its constitutions and laws. The titles held by the trustees are bound by those purposes; and if those purposes have failed, then as in the Grimshaw case, the property reverts by way of resulting trust to all those owners of the "joint and indivisible stock," from 1836, as evidenced by membership, and the heirs and next of kin of those of them who have died as members.

XVII.

THE GRANTS CREATE A PERPETUITY.

It is also evident—without again quoting the articles themselves—that the community has no fixed period of life. So far as the articles are concerned, the scheme of the society contemplates *perpetual* life. Its death, winding up, insolvency, dissolution from any cause, are never thought of, and are never mentioned or provided for.

The trusts created are to endure perpetually coincident with the perpetual life of the society; the titles vested are therefore conclusively for a period beyond a life or lives in being and twenty-one years thereafter, and thus they do offend against the rule against the perpetuities.

The master's contention is that as the gifts were absolute, there was the power of sale in the trustees, and that therefore there was no perpetuity. But the argument overlooks the vital fact that

the proceeds of such sales are to be held upon the same trusts as were the properties sold. The power of sale is not given to *terminate*, but to continue and benefit the community.

It is not the *power* of *sale*, but *the period of distribution*, which decides whether a perpetuity has been created. The suspension of the power to alienate the subject of a trust is not relieved against by a power to exchange for other property to be held on the same trust, or to sell it and reinvest the proceeds to be held on the same trust.

The only power of sale is given by Article 5th of the Articles of August 12th, 1847 (Exhibit "E," page 61), and is part of the powers given to the Board of Trustees in the management of the affairs of the society.

The next article (6th) expressly declares:

> "That all the property, real, personal and mixed, which "*now or hereafter* shall be held or acquired by any trus- "tee or trustees, or persons under them, is and shall be "deemed the common property of said society," * * * * "according to the articles of association re-established and "continued, and according to the present agreement."

If the master be right, a sale of trust property defeats the trust and the proceeds of the sale are not bound by the trust, and the express provisions of the Articles of 1847 are nullified.

Again the master finds—and is therein sustained by the Court below—that the trusts created are not trusts for the *members* of the society, *but for the society itself as a society*. Therefore, members may be admitted; they may die; they may be expelled; yet the society goes on, and the trusts are undisturbed.

We urge that the trusts for this society are unprotected by incorporation, by any of the purposes which protect an unincorporated association; that they are not based on an anticipated corporation, and that, therefore, the grant being in fee, the accretions cumula-

tive, without limit, the trusts violate the rule against perpetuties, and are void.

That the properties, real and personal, covered thereby, therefore, revert by way of resulting trust to the donors, their heirs or legal representatives.

The third paragraph of Article 5th of the agreement of August 12th, 1847 (Record, page 224), authorizes the trustees to purchase and sell real estate, and to sell all of the lands now or hereafter belonging to the society, but expressly provides "that the proceeds of all such sales *shall be held in trust for the society.*

It is apparent that if the society continues to live, as it has already for so many years, the trust of the titles, or the proceeds, will continue to live in the name of its trustees. Even if the real estate were sold, the proceeds of that real estate remains land, and is to be treated as land.

So far as the personal property, the *profits* and accretions therefrom and from the labor of members are concerned, it becomes part of the capital of the community, necessarily, because there are no stockholders among whom they could be divided. Hence those accumulations are perpetual, and are in violation of the statute regulating accumulations.

We earnestly urge upon the Court that the property held by these trustees, under the necessary construction of the articles, is a trust for the society as long as it remains a society, and upon its death that it shall revert to the donors, their heirs and legal representatives.

That the particular estate or use for the society cannot be broken or defeated by the society, for it has no control under the articles over the titles, which are inflexibly fixed in the trustees; first, for the society; second, when the society ceases to be a society, then for the donors as aforesaid.

The society is the beneficiary for its life only. It has no immediate right to become the present absolute owner of the trust properties.

> "A perfect definition of a perpetuity has not been given, "and the nearest approach to it is found in Lewis on Per- "petuities, Ch., 12, where it is said to be a future limi- "tation, whether executory or by way of remainder; and "of real or personal property; which is not to vest till "after the expiration of, or which will not necessarily vest "within the period prescribed by law for the creation of "future estates, and which is not destructible by the "person for the time being entitled to the property subject "to the future limitation, except with the concurrence of "the person interested in the contingent event."
>
> Hillard *vs.* Miller, 10th Barr, 334.

If it is conceded that the trust estate may continue for more than a life now in being and twenty-one years; and if it be conceded, as we think it must, that the Harmony Society had no power to convert its interests into an absolute estate, than the definition prevails, and we have here estates void for perpetuity.

In Niefflin's Appeal, 121, Pa. State, 205, the life tenant had a power of sale in fee simple in her lifetime, by which she could convert her limited estate into an absolute estate. It was held *that that power* defeated the rule against perpetuities. She did convey and she had the right to apply the purchase money as she saw fit.

Hare, J., in the Court below, C. P. No. 4, Philadelphia, so holding, says, among other things:

> "If this inference is just, she had an immediate right "to become the present absolute owner * * * * she could "undeniably have vested an absolute interest in the buyer, "and so push the property beyond the scope of a rule which "only applies where the holder's estate is indestructible.

"*A power to sell, and re-invest the purchase money for "the same uses would stand on a different footing.*" * * *

The decree of the lower Court was affirmed. Justice Green in that opinion, cites the following from Gray's Work on Perpetuities, Section 526:

"And if a man who has a vested limited interest in "property has the *present unconditional* right to turn that "limited interest into an absolute interest, and thus to "acquire the *present unconditional* absolute interest, he "is regarded by the rule against perpetuities as already "having such interest. * * * *

"*There must be a person with a vested limited interest "who has the immediate right to become the present ab-"solute owner.*"

Where, then will be found any immediate right in the Harmony Society to become the present absolute owner?

And where can be found in the trustee any power to absolve the proceeds of the trust real estate from the trust for the life of the society?

It is held *In Re* Walkerly's Est., 41 Pacific Rep., cited in American Digest for 1896, page 772, and 108 Cal., 627, cited in American Digest, page 4249, paragraph 3, that "though a devise in trust allows the trustee *to sell the property at any time, still it being provided that the trustees shall hold and invest the proceeds until distribution, which is not to be made until a definite time*, the perpetuity is created under the Civil Code, Sec. 771, which declares that the suspension of all power to alienate the subject of a trust *other than power to exchange it for other property to be held on the same trust, or to sell it and re-invest the proceeds*, to be held on the same trust, is a suspension of the power of alienation, within the inhibition of Sec. 715.

It is submitted that such is the common law rule, namely, that where there is a trust created or a restraint of alienation which would bring the trust within the rule against perpetuity, *that the*

mere power to sell and change investments, the proceeds to be held upon the same trust, does not take it out of the inhibition of the statute.

It was contended below by the learned counsel for the defendants that under the Articles of 1847, the trustees have power to sell all the property the title to which they hold in trust—and that, therefore, these articles, as the others, are no restraint upon alienation, and do not create a perpetuity. Yet if the trustees do sell, it is only for the purpose of exchange, and the substituted property is to be held by them on the same trusts.

And so it is that all the property, original or substituted is for trusts which may continue forever, and the corpus is to be never diverted from the trust, so far as the articles provide.

And this society is unincorporated, and is for neither a religious, charitable, literary or scientific purpose.

In the case of Barnes *vs.* Barnes, 26 Maryland, 171, 172, the devise was in trust for children and their heirs. The Court held that no question is presented as to the future vesting of an executory estate, in order to determine the validity of the preceding one; but *simply* whether the trusts of the will require in their execution a longer period than that prescribed by the rule against perpetuities, and therefore render the property devised to the trustees inalienable during that time. If so, the law denounces the devise in trust as a perpetuity and declares it void.

And the devise was held to violate the rule.

It seems a weak and insufficient distinction to say that the power to sell particular properties by a trustee, in aid of the trust, avoids the rule, when the corpus of the whole remains to uphold and maintain a trust for a period of time which the rule prohibits.

Neither, in the event of this trust being held violative of the rule, would the trustees hold the title cleared of the trusts.

In the case at bar, the society itself in 1836, held the property; as donors declared that the property should be held by the society; constituted themselves as donees of the joint and indivisible stock; the titles are held by agents, managers or trustees, and were so taken permeated with the trusts so created. The case differs radically from those wherein the donor is a stranger, creating a trust for a third party, between whom there was and could be no privity.

ACCUMULATION.

It is unnecessary to do more than to refer again to the trusts declared for the use and benefit of the society to establish the fact that they provide a system of accumulation, which become part of the corpus of the estate, so that the rents, issues, interests or profits thereof shall be wholly accumulated for a longer term than a life or lives in being, and the term of twenty-one years thereafter, in express violation of the Statutes of Pennsylvania, dated April 18, 1853, Sec. 9, pl. 503; Purdon's Digest, page 1833, pl. 9, which is in these words:

> "9. No person or persons shall, after the passing of "this Act, by any deed, will or otherwise (*i*), settle or "dispose of any real or personal property, so and in such "manner that the rents, issues, interests or profits there- "of shall be wholly or partially accumulated, for any "longer term than the life or lives of any such grantor or "grantors, settler or settlers, or testator, and the term "of twenty-one years from the death of any such grantor, "settler or testator (*k*); that is to say, only after such "decease during the minority or respective minorities, "with allowance for the period of gestation of any per- "son or persons who, under the uses or trusts of the "deed, will or other assurance directing such accumula- "tion, would, for the time being if of full age, be entitled "unto the rents, issues, interests and profits so directed "to accumulate. And in every case where any accumu- "lation shall be directed otherwise than as aforesaid, "such direction shall be null and void, in so far as it shall

"exceed the limits of this act; (*l*) And the rents, issues, "interests and profits so directed to be accumulated con- "trary to the provisions of this Act, shall go to and be "received by such person or persons as would have been "entitled thereto if such accumulation had not been di- "rected."

XVIII.

We submit to the Court:

1st. It seems certain that wherever this trust property may go when the time comes, that the time is now at hand when the Court should take this property into its control.

Is it not apparent that the trustee has been faithless to his trust? And if the Court comes to this knowledge in any way, is it not within its power, *of its own motion*, to take notice of the breach of trust.

XIX.

THE DECREE OF THE COURT BELOW.

That decree is as follows (Record, page 197):

"And now, this thirteenth day of February, 1899, "upon consideration, it is ordered, adjudged and decreed "that the plaintiff's bill be dismissed; and it is further "ordered, adjudged and decreed that the plaintiffs pay "the costs, including the master's fees to be fixed *sec.* "*reg., and which, together with his compensation as exam-* "*iner shall be paid to the master in the first instance by* "*the defendants.*"

The Record discloses (page 2) that on March 4, 1899, the master as master and examiner was allowed $3,000.

And that on March 15, 1899, that sum was paid to him by John S. Duss, trustee, of the Harmony Society.

The learned judge of the Circuit Court says:

"The bill alleges conspiracy, fraud and immorality, "and these grave charges have not been withdrawn. "Having successfully vindicated themselves from these "charges the defendants are justly entitled to full costs." (Record, page 196.)

1st. Appellant made proof, and was sustained by the master, of existing immoralities among members of the society. By the master's report (page .)

As to the charges of fraud, the master has found as a fact that Mr. Hice and Mr. Reeves, two of the co-defendants in this cause, were partners and officers in the Economy Savings Institution, and that John S. Duss applied the trust funds in his hands to the payment of the entire liability of that bank, to the relief of Hice and Reeves from payment of any part or any share of their own liability, amounting to some $300,000 or $400,000; the said Savings Institution being an individual liability bank. And the evidence discloses that no effort was previously made, nor has at any time since been made by John S. Duss to compel such contribution. In addition the evidence also discloses that Mr. Hice was and had been for many years attorney and counsellor of the Harmony Society.

2nd. The appellants made an effort to show the general bad conduct of John S. Duss, and were met upon exception to that line of proof, by a decision of Judge Acheson, of the Circuit Court (Record, page 191), which says, *inter alia,*

"But with the alleged breaches of trust by Duss, as "trustee of the Harmony Society, or with his alleged "personal misconduct, the plaintiffs have no concern "unless they really have a proprietory title. It would, "therefore, be premature, and might be a sheer waste of "time to take testimony in relation to those matters un- "til the plaintiffs have made out a *prima facie* case of "ownership. * * * In the meantime his examination should "be confined within the limit alone indicated."

2nd. The appellants confined themselves to acts done by Duss and permitted by him to be done by other members, to show a *departure from the purposes, principles and doctrines of the society.*

Every charge we made against Duss was supported by testimony produced by appellants. The consideration of that testimony occupies many pages of the Master's Report. He, for one reason or another, fails to give effect to our evidence and chose to give weight to the testimony of Duss.

But *these charges and the testimony were made and introduced in good faith.* That the testimony ought to have convinced the master, we have no doubt, to-day. Except for circumstances as respects those very findings against us we would be here in this appeal on assignments of error as respects those findings.

The most heinous charge against Duss was sustained by an eye witness, and by other evidence quite convincing. That eye witness within three or four days recanted his testimony, and thereupon counsel for appellants, cause him to be indicted for perjury for his recantaion. When called for trial he plead *nolle contendre,* and stated to the Court that his recantation was perjured, and that his original testimony was true.

An offer of the record to prove his plea and confession was refused.

The fact, however, that testimony *was* introduced proving and tending to sustain the charges made should be and we submit is ample evidence of plaintiff's good faith, and should have protected the appellants against the penalty of the costs.

XX.

Whether the appellants have made out their title to proprietary

rights, it cannot, we think, be doubted they had good reason for their faith.

What were the plaintiffs to do in the circumstances? If they are right, had they not good reason to believe that all the trust estates would be dissipated and scattered? What decision or rule at law had previously settled the tenure of the estates in controversy?

It will be now for the first time decided, whether the appellants have reversionary rights, or whether the estates go to the last surviving member. Vast estates depend upon the result. Titles to those lands are dependent upon this decision.

In any aspect the appellants are not merely entitled to be relieved of the costs, but the expenses they have been compelled to incur should, we submit, be imposed upon the estates of the trust.

IN CONCLUSION:

It is further respectfully represented that the trust property of the society is in the possession of an irresponsible corporation dealing in real estate, which has it in its power to dispose of it all to third persons ignorant of any trust; that its title was acquired for a grossly inadequate and fraudulent undervaluation, and was paid for by its entire capital stock of $400,000; and that petitioners are unprotected by any interlocutory decree to preserve its status quo.

Therefore, in conclusion we most earnestly and respectfully represent that if the present decree is permitted to stand, Mr. Duss, the Senior Trustee, is:

(1) Openly invited to close the door to new members and to purchase the retirement of all the seven remaining members (under deeds of liquidation similar to the ones that were signed by the members retiring since the year 1893), so that he and his wife will alone remain in possession of this great estate and answerable to no one for its use or disposition.

(2) If it were lawful for the remaining members of the society to convey all the trust property to the Union Company, it will be lawful in the future:

(a) Either to sell certificates of stock in the Union Company for cash and depart with the proceeds;

(b) Or convert said assets to other private or capitalistic enterprises independent of their character or relation to the trusts under which said property was admittedly held.

It finally follows, therefore, that while the Circuit Court held it was unnecessary to pass upon and determine the final disposition of the property in case of dissolution, that we, as reversioners, must stand idly by and witness the practical and effective private sequestration of the trust estate until nothing remains to revert, because this covert method of disintegration will put the entire trust estate into the hands of the present surviving members without let or hindrance. To leave this cause in such a position seems improvident, and affords the present complainants no means whatever of protecting their rights in the premises.

Reversioners, just as in the case of remaindermen, have rights that a chancellor alone can adequately protect. The present decree invites the waste or entire dissipation of the trust estate, besides imposing heavy costs on the complainants in their efforts to conserve the estate of their ancestors. As the next of kin and as reversioners under a resulting trust, the complainants occupy a position entitling them to the protection of a Court of Equity, instead of leaving the whole estate in the hands of one whom the evidence shows to be wholly irresponsible, and, judged by his acts, intent upon the absorption of the assets of the society by himself and his colleagues, through methods so certain, if continued, that this "joint and indivisible stock" will become the private fortune of a man who never contributed a dollar or an acre of land to the society; a result clearly and utterly at variance with the articles of association creating the trust. While it may be that the ancestors of the plaintiffs intended (whether this could be lawfully done or not) that all inheritable rights should be suspended during the *life*

of the society, it is equally clear that they never intended that one or more persons, who later were entrusted with the control and perpetuation of the society, should be rewarded with the whole trust estate by acts of dissolution brought about by the coveteousness and treachery of would-be surviving members, acting as private liquidators.

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No. 934, 38

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for (Appts.) Pet

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

Filed Apr. 22, 1902.

CHRISTIAN SCHWARTZ ET AL.,
Plaintiffs below and Appellants,

vs.

JOHN S. DUSS ET AL.,
Defendants below and Appellees.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

REPLY TO APPELLEES' BRIEF OF ARGUMENT.

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OCTOBER TERM, 1901.

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REPLY TO APPELLEES.

Although the burden of sustaining the several Assignments of Error rests upon appellants, the appellee's brief exceeds by nearly one hundred pages the argument of appellants. By reason of its discussion of questions, largely, extraneous to the Assignments of Error, its seeming perversion of the appellant's positions and by its failure to candidly meet the issues in this case, we feel impelled to make a brief reply.

No abler or more ingenious counsel can be found in Pennsylvania than the gentleman who prepared the opposing brief; his failure to indulge in brevity and directness shows, in our judgment, disposition to so becloud the real issues that matters will be left in *statu quo* in so far as the relief sought by the appellants are concerned. Otherwise why are more than one hundred and fifty pages devoted to matters having but the slightest bearing on the present Assignments of Error, and only a small portion of the remaining brief to a discussion of these assignments?

The foundation charge in this proceeding is: that Mr. Duss has deliberately set about to wind up the Harmony Society, of which he is the sole trustee, and under the articles and under the evidence, its exclusive financial manager and despotic patriarch; that he has accomplished this by: (a) getting rid of seventeen active, vigorous members under deeds of purchase and partition, based upon manifestly false valuation of existing assets; (b) by the death of seventeen aged members since he became trustee and his failure to elect a single new member into the society for the past nine years; (c) by turning the home of the society and all its outside real estate over to a private business corporation controlled by a Board of Directors, most of whom are non-members, with its actual place of business in the City of Pittsburgh, far beyond the scrutiny of the alleged Board of Elders, and wholly and absolutely independent of their control or management; (d) by the reduction of the survivors to a few ignorant women, so that Mr. Duss and his wife now compose one-fourth the total membership of this once vast communistic society, leaving no member to be governed and not a sufficient number to fill the eldership and trusteeships, and such as they are utterly incapable of standing in the way of any plan contemplated by Mr. Duss;

and finally (e) should this Court fail to reverse the lower Court or modify its decree, it necessarily lies in Mr. Duss' power to still further reduce the survivors, numbers having then been held to be wholly immaterial. In that event he and his wife alone remain as the owners of over five million dollars' worth of assets, and as no restriction has been placed upon the sale of the stock certificates of the Union Company, this couple, admitted since 1890, constituting the Harmony Society, can quietly leave for foreign lands, and the question of what becomes of the property "after" dissolution will no longer be an enigma for the Courts of this country to solve, for "the riches will have taken wings" and nothing will remain within the hands of a chancellor for distribution, while the Court costs of this litigation, amounting to over ten thousand dollars, are left as a sole reward for the half dozen Dutch farmers, who, indignant at the spoilation of their ancestors' interests and the heartless desecration of their remains, saw fit to apply to a chancellor to stay the hands of these parties, seeking by this litigation not the enrichment of themselves, but simply a distribution of the assets of this defunct society among all the donors, and their legal representatives.

Practically no answer is made to these propositions in appellant's printed argument, until we reach page 159 of their brief, where respectively, under the heads of "Has the Harmony Society been Dissolved"—"Union Company"—"Present Paucity of Members"—"Withdrawal of Members," pages *159* to *183*, inclusive, do we find a reply to our contentions. Just *23* pages out of *231* devoted to these issues. In connection with this reply we most earnestly ask this Court to read therewith these *23* pages. It will appear, we think, with startling plainness the weakness of the apellee's reply and explain the diffusive and largely irrelevant character of the most of the preceding pages.

THE APPELLEES NOW OPENLY PROCLAIM THE RIGHT TO TAKE TO THEMSELVES INDIVIDUALLY ALL THE PROPERTY OF THE HARMONY SOCIETY.

When this litigation first began, the defendants confronted with the direct and specific charge that they contemplated dissolving the society and secretly dividing its assets among themselves by a process of private liquidation, and without notice to the heirs of the deceased donors, in the most indignant terms, denied these accusa-

tions. In paragraph *21*, page *43*, Record, of Mr. Duss' answer, is the following emphatic declaration to our charge in the bill that he was intent upon winding up the society as aforesaid:

"Each and all the allegations of the Twenty-first paragraph *are "utterly and absolutely false. I have never for a moment conceived "or had any purpose of winding up the society or any desire to have "the remaining members thereof withdraw."*

And in paragraph six of the Defendants' General Answer they say: "That all the members especially covenanted with each other "that the said common fund and property of the society should be "and *remain* joint and *indivisible* stock."

On the witness stand, and with the same assumed indignation, denials were made that the society is being dissolved and all sorts of extraordinary excuses and subterfuges were indulged in to account for the many acts that point, we contend, unerringly to liquidation and dissolution. However unjust, or however against the weight of the testimony and the circumstantial evidence, it may have been the lower Court held that the society was not being dissolved, nor did the acts complained of indicate any intention to dissolve the same, *and on this ground alone* the Circuit Court and the Court of Appeals dismissed the bill, saying that the society not being dissolved the question of where its assets went were not properly before them.

The appellees therefore being relieved of these accusations by the Court accepting their sworn answers and their testimony, and now fortified by theseveral decisions in this case in their favor, proceed to boldly throw off the cloak and stand revealed as the very characters we depicted them to be from the first, viz.: the pre-arranged survivors acting as private liquidators and distributees of the Harmony Society's trust estates.

Mark the following from the Appellees Brief, page 85:

"It is the society, as a society, which owns this property. It is "the entire body as one whole. *If at any time the society did dis-"solve its property* would go to the persons who *then* were its mem-"bers. *No one else has any legal or equitable claim to it except "those members. To them, and to them alone, it would belong, and "among them it would be divided."*

And page 88:

"It seems therefore plain that if at any time all its members "agreed to a dissolution, that would be the end of it. It exists "merely because of the co-operation of its living members. When "once all these members agree not any longer to *co-operate*, not any "longer to carry on the society it of necessity would terminate."

In other words, Mr. Duss now asserts throughout the argument that if this bill is dismissed he can proceed to dissolve the society, and all that it requires to do this is for his wife and the four or five women remaining, most of them admitted since 1890, to "agree not any longer to co-operate" and that *"would be the end of it."* What a simple proposition all this is. A society that has existed for nearly one hundred years; that had a constitution, and a precise method of government; with doctrines prescribing and regulating the temporal and spiritual welfare of each member; a society that received all its property under a covenant intended to maintain and perpetuate its system, and which in express language provided that all of said property should *"forever* remain indivisible stock," can now be divided among the present members who signed this very covenant.

This is the present attitude of this recent member, who, in his answer, said that he "never for a moment conceived or had any purpose of winding up the society." Can it be that he only has his counsel devote many pages to this proposition of his ability to wind up the society and take all the property, as an evidence of his good faith, and notwithstanding being thus able to take all these millions he still resolutely refuses to do so! The temerity of such declarations at the present date seems almost inconceivable.

> The equities are with us
>
> "Whoever claims against the laws of descent must show a written title which the Court can with satisfaction decide to be sufficient."
>
> Lipman's Appeal, 30 Pa. 189.
>
> There is no such written title.

An intent to create such an estate is inconceivable. Is it supposable that the creators of the trust bound themselves as they did to grant and convey all their property in possession, remainder, reversion and in expectancy, and to defeat their heirs, all for the benefit of some ultimate man, whom they never dreamed of, whose very right to so claim, necessarily contemplated the death of the society, which they believed was to exist until the millenium, and in the face of the contract that this property should be forever indivisible? The very word society is inconsistent with survivorship. The system of a Patriarchal government implies members to be governed, and from the begnning to the end of the articles there is no period fixed for the termination of the life of the society. There is no remainder over and no provision of any kind for the disposition of the trust estate in the event of the extinction of the society.

While we cannot undertake to consider or answer in detail very many contentions of the appellees, we desire to make a few corrections and point out several conclusions that we cannot permit to stand in appellees printed argument with our assent or acquiescence.

CRITICISM OF APPELLANT'S HISTORY OF THE CASE.

Appellee's counsel take exception to our history of the case and devotes a number of pages to the same. Had they kept in mind the last sentence in our statement they would have understood, perhaps, our position a little better, to wit, "The principal facts are admitted in this case—*the differences arise on the legal inferences to be drawn therefrom.*" In other words, the very portion of the History of the Case to which he makes most objection is that which is based upon the present Assignments of Error. We contend that, taking all the facts collectively and drawing the fair and legal inferences therefrom, the Harmony Society is now dissolved, and that the present defendants are in possession of its trust properties; and if not prohibited by this Court will take it to themselves, or so waste or distribute the same that nothing will remain of this property.

It will be for this Court to say whether we are correct in our contentions and in our conclusions.

It is rather odd that appellee's counsel in this criticism of our history of the case starts out with a noticeable mis-statemnet, *vide*, page 204: "The releases of all withdrawing members are in the master's report and add nothing to appellant's case." Not only are all these releases *not* in the master's report, but not a single one of them, although they are, in one aspect of this case, of the very highest importance. Not only this, but the master even fails to give the slightest summary of them or discuss their legal effect, which we may say is only in keeping with his entire method of considering the complainant's several positions; further than this, appellee's counsel, in his brief, does not print these so-called deeds of liquidation, but attempts to belittle their significance. Like the master, he prefers to ignore them.

It is further asserted that we are mistaken in saying that Mr. Duss and his wife first violated the rule against celibacy in occupying the Great House. We still assert it. After celibacy was adopted

the husbands and wives lived apart even where they may have occupied the same premises, and there is no evidence whatever that Father Rapp, after the adoption of celibacy had a wife or violated this rule. In regard to all the members generally the same answer can be made; for while it is true that many married people originally came into the society, none were married therein, and until lately all lived apart, and completely severed their conjugal relations. This fact has been judicially recognized in every case in which the society appears, and the mere citation by the master of early records that showed husbands and wives living in the society does not of itself prove a violation of the doctrine of celibacy. As stated in our brief the Court of Appeals held that celibacy was one of the principles of the society, and if it were not the absolute rule, is it not most strange that a marriage ceremony is wholly unknown in the society.

But we have only to quote from the defendant's own answer to prove that celibacy was a principle [page 1, page 21, Record]:

"In 1807, different members of the society advocated the efficacy of celibacy, and since then this doctrine has been followed and practiced by a great number, if not all, of the members of the Harmony Society."

That Mr. Duss—the sole trustee—living with his wife and children in the Great House, has dealt a blow to this cardinal principle of this communistic society needs no argument. Duss' children, who are not members, stand exactly in the same class as the appellee's—so if he is successful in obtaining all the society's property—they, the abhorent class to which we belong, will eventually get it too. Celibacy was primarily intended to prevent the temptation that arises from family intrigue and the like—so destructive to this form of communism.

Appellee's counsel further criticises our assertion that Mr. Duss bought out members of the society and induced them to leave. These assertions we still strongly adhere to, and they are distinctly a part of the plaintiff's case.

Appellee's counsel denies that the master was appointed because Mr. Duss refused to answer questions, but because we asked improper questions. It is unnecessary to discuss this other than to say that the fact of having a master at all grew out of controversies in connection with the admissibility of evidence, and that the master was appointed for no other reason, although under the agreement, he was authorized to submit his report on the law and facts to the Circuit Court.

This submission to the Master proved most unwise for the appellants, for reasons wholly distinct from his decision, and since his

decision we have been practically unable to have the lower tribunals give any independent consideration to the questions of law that are herein presented, and we therefore have the case standing to-day upon the alleged conclusions of law by the master. This we consider remarkable for a case of such importance, and especially where many of the questions of law have been practically ignored, though the exceptions to the master's report invited their consideration.

Again, appellee's counsel asserts that we introduced the financial affairs of the society into this case and that compelled the master to give so much consideration to them. In this he is completely in error. We objected most strenuously to the manner in which the record was burdened with hundreds of pages of book accounts and trifling financial data that was wholly foreign to the question raised by us. Our position on this subject is clearly defined on page *20 and 21* of our History of the Case, and we think that if this Court will examine the dozen of pages of book accounts and inventories in the master's report it will appear how foreign such items are to the question raised by us. The appellee's reference to the Kroll-Weggel matter and Duss' purchase of members' interests will be considered subsequently.

NO TERMINAL PERIOD.

On page 93 of appellee's brief, in treating of the effect of the absence of express provisions for a dissolution, counsel asks: "How does that help the plaintiffs?" Our answer is in two ways:

1st. That such a system of collecting and carrying accumulations forever is in plain contravention of the rule against perpetuities, and for this reason such indefinite accumulations of real estate and personal property makes it mandatory upon the Court to direct a dissolution, if one has not already occurred.

2nd. The failure to provide a terminal period shows a direct intention not to create joint tenancy or tontine for the present survivors. The reason that the Court gave Nachtrieb his share in the society was because the society broke its agreement with him (by his unjust expulsion) and had he died before bringing suit for his interest his heirs undoubtedly would have received his share. In this case no other questions were raised and the Court determined, the society not having been dissolved, that this was proper remedy for Nachtrieb. Now, however, the society having become terminated by those entrusted with its perpetual continuation, and there existing no practical way by which this Court can compel its continuation

and the observance of all the customs, rules, principles and regulations, set forth in the Articles of Association, it seems plain to us, therefore, that the contract has now been broken with all the donors, and the property goes to them, or their heirs, by way of resulting trust.

"FOREVER JOINT AND INDIVISIBLE STOCK."

Appellant's counsel must admit their inability to follow the sinuous argument of opposing counsel in the chapter discussing the "Duration of Society" (page 8), "Living Members in Absolute Control of Property" (page 89), and "Joint and Indivisible Stock" (page 97).

In treating of the "joint and indivisible" stock he says (page 97):

"It is admittedly joint, that is the society's property; which society "was composed of individual members. Being joint it necessarily "included the idea of survivorship. It was indivisible without "unanimous consent—but with it it was divisible."

This may sound very fine, but what does it mean? Just how a society that contracted with ante-cedent donors and had received, under an express trust, property of all kinds, including labor and accumlations, which was to be held by it under a covenant that it should be: "Now and *forever* joint and *indivisible* stock," can have such stock wrested from it and divided among a few subsequent members, when such a provision was undoubtedly inserted for the purpose of keeping away designing applicants, and removing all temptation from possibly unworthy successors in the society who might seek to reap the benefits of this accumulation and even destroy the society in their efforts to seize it, we cannot see. To say that the property which is stamped *"forever indivisible"* shall become divisible when a few subsequent persons who signed this covenant see fit to defeat what they agreed not to defeat, and which their predecessors made a part of their contract is to fly in the face of the plain meaning of a very plain and self-evident provision.

If such a principle of construction was applied to all trust properties on the part of transient beneficiaries none would last very long. It is admitted that this is a communistic society; that it

had an express method of government, practically unchanged down to 1890, except by the substitution of a dual patriarchy or Board of Trustees, on the death of Father Rapp; that it had many definite principles in the Articles of Association relating to the temporal and spiritual welfare of the members; that the property was held by the society as donee, and all were equal givers in the trust property, which was created for carrying out and maintaining such principles. Now, it matters not, whether we, as individuals, agreed with such a scheme of sociology or disapproved of it: such as it was, the creating members had a right as against successive members to provide for its indefinite continuation if they saw fit. Just how Mr. Duss, who signed all these articles can say that it lies in his power not only to wreck the society, but take all its property, we cannot see. If he does not agree with its peculiar tenets, its doctrines and systems of life he should never have sought membership in it, or having gotten unwittingly in and found it distasteful he should have resigned and gone his way again. But no, he prefers to destroy what he agreed to continue and seize what he covenanted not to divide. Can he do this and will this Court be powerless to prevent it?

ARTICLE OF 1836 DOES NOT DISINHERIT IN CASE OF DISSOLUTION.

The frequent reiteration by opposing counsel of the provision of 1836 that no representatives of a deceased member shall be entitled to receive back contributions, or anything else, applies only to a going, living society, and of course the appellants are bound by such provision during the life of the society (leaving out of consideration its dissolution by reason of its violating the rule against perpetuities, &c.). But these provisions were inserted, just as the provisions against the divisibility of the stock, for the purpose of making it possible to continue the society indefinitely. When the society ends by no fault of the appellants but due to the "co-operation" of the defendants, it is most inconsistent to have opposing counsel argue the latter's right to violate the provisions of the articles in so far as they prohibit a division and ask for the enforcement of the same articles against the legal representatives of deceased donors—who are only barred by a living society.

NUMBERS AND RIGHTS OF CLAIMANTS.

QUERIES OF APPELLEES.

Commencing on page 83 opposing counsel in his brief attempts to ridicule the right of the heirs of deceased donors to participate in distribution after a dissolution of the estate.

He says: "The real estate at Economy is its oldest acquisition and the Leetsdale property and all personal property was acquired in later years. It is certain that most of it was acquired in external business or in profits from it."

The property now in controversy really consists of the home tract of three thousand acres and its improvements, which has been conveyed to the Union Company. The outside personal property is of little monetary value. Hence the property in controversy was not largely "acquired by its external business." Again counsel says: "It is also certain that no one of the members could possibly identify the property any ancestor put into the society." Under the Articles of 1836 that is just what was intended, and all were made equal donors irrespective of what they contributed.

Again he says: "Those who left there did so over seventy (70) years ago. How is it possible to now put life into such a claim?" We cannot understand this question, for we make no such claim.

Again on page 83, are a half dozen questions in one paragraph we are invited to answer: "Could the heirs force themselves into the society and demand support?" Answer: We never asserted this proposition. "Could these heirs at any time insist on a partition of the property?" Same answer. "Could they demand an account and if refused force a settlement?" Same answer. "Could one who withdrew do so?" Same answer. "Could the heirs of one who died in the society?" Answer. That depends upon whether the society was dissolved. "Have all the heirs and descendants of all the deceased members of the society a property right in its assets?" Not necessarily; it depends upon the date their ancestors died and whether the society was dissolved. "Have they a right entitling them to interfere in its management?" We never asserted this and never did interfere when the society was alive.

In order to avoid encumbering this case with many questions that really exist in a full consideration of the Articles of Association, we have passed them by in order that the crucial ones could receive the full consideration of this Court. There are many questions much more pertinent than those we have just answered. Take for instance the provision of the Article of 1827 relating to the members giving all their property which they owned: "in possession, or in remainder, or in reversion, or in expectancy." Such a provision, if enforced, would upset our State laws regulating intestacy, testamentary disposition and the prescribed methods of conveyancing; a life tenant of real estate who is not a member of the society and survived a remainderman who was a member of the Harmony Society would find the society a successor to the title; in other words, under this broad clause, one could never tell when outside real estate would vest, just as is the case of all real estate within the society. We give this illustration as showing the illegality of such an association. We have not attempted by a full discussion to embarrass this Court with many questions that might otherwise be raised.

We again cite from appellee's brief, *ante*: "Mr. Duss showed that there had been 1050 members of the society. Our opponents more than double that number."

This is not correct. Our claim from the start is based upon the membership at and subsequent to the Article of 1836. We never said that there were over two thousand such members, but on the contrary say that taking the master's report and evidence, we doubt if there are over four or five hundred that *died in fellowship, leaving heirs,* subject to the Articles of 1836. Christian Schwartz, for instance, is the *sole heir* of *eight* deceased members. If four hundred died in fellowship and have to-day each two living heirs, on the average, that would make eight hundred possible participants, and if the property is worth four millions or over they would each receive about five thousand dollars a piece. But whether it is more or whether it is less is no reason why the appellees should try to belittle the case or the rights of the appellants because such a large number of persons may be interested in the results of this litigation.

The amount we get may not be very large, and especially for the record plaintiffs, who stand charged with the costs—but we are satisfied if we prevail, for some contests are not necessarily to be gauged by the financial results. True this large property

would average much higher per capita if it went simply to Mr. Duss and those he saw fit to share it with. This seems to be one of the reasons opposing counsel gives for not having it distributed in the way we seek.

In reality the appellants represent the Harmony Society—for if they prevail the four hundred deceased donors of the trust have their own flesh and blood reinstated in the line of inheritance, and we may rest assured that if such comes about that the graves of these good people will not long be a part of the capitalistic stock of the Union Company.

UNION COMPANY.

This subject, though one of the most important in the case has been fully answered in our History of the Case, page 15 and Argument, page 123 and we only desire to make a citation from appellee's brief, page 173, which gives the pretended reasons for the organization of the Union Company, and answer the same:

"The facts are that after the debts of the Economy Savings Bank were paid by the society borrowing large loans on long time, new troubles arose. Such suits as the present were threatened which might involve the title of the society to this real estate and prevent the sale to raise money. Then escheat proceedings were threatened which would still further complicate the title."

In the first place the evidence showed and the master found that at the date of the organization of the Union Company, no debts existed except the McCullough mortgage, and to meet this there was over three hundred thousand dollars of the society's securities available. There was no evidence whatever that escheat proceedings were *then* threatened.

The contention that the society had a legal right to abandon its home and give up what alone was the basis of this communistic society founded upon agricultural pursuits because the prior trustees had bought and sold outside real estate for investment or speculation is no answer. A corporation—a charity, a religious

society, or in fact any form of organization having prescribed functions to be performed and organized for their fulfilment may in some cases sell or part with what is not essential to its corporate or formal existence, but wherever they part with property that is essential to the performance of its duties or requirements, it is illegal, perversive, and if the parting of such property proves irreparable then the end is reached, for it cannot continue in some other form, simply because it may have in its possession money or property realized therefrom which cannot be used for the performance of its prescribed duties and requirements. That is just what has happened here; for by this conveyance to the Union Company they have ended the life of this communistic society, destroyed its peculiar methods of government, ousted its officers and set up a new being whose allegiance is to the State of Pennsylvania, and whose laws are the statutes of our State and not the Articles of Association. This is self evident and we will not take the time of the Court further on this point. Our brief, as aforesaid, discusses the other features involved.

We, however, think it most important to call the Court's attention to that portion of appellee's brief on page 174, where the written authorization of the members of the society is cited, giving the trustees power to convey the home and other real estate of the society to the Union Company.

Right in the heart of this agreement and in the midst of a sentence there is cut out of said agreement the most vital thing in it—its elimination being noted by asterists. That such an elimination was not due to its irrelevancy or length is apparent, viz.:

"—now owned and held by said trustees for the benefit of said so-
"ciety to the end that *all said lands, tenements and hereditaments*
"may be *owned, held and conveyed* by said incorporated company
"and *be sold and otherwise disposed of* from time to time in pur-
"suance of proper corporate action *as may be determined by the di-*
"rectors and officers of said incorporated company."

Here by "common consent" we have the surviving members agreeing to the destruction of the trust property and the substitution of its successor, free from their control.

Is it any wonder the opposing counsel cut out the above quotation? The pretense that the Union Company was a temporary expedient is up-set by the absolute character of the conveyance to it and the fact that the alleged crisis passed away years ago.

REPLY TO CONSPIRACIES CHARGED. MR. DUSS' RECORD.

We have already, quite fully, in our Brief of Argument, discussed the subject referred to in the above chapters. Pages 182 to 204, appellee's brief, however, contain a number of erroneous assertions and make such unjust reflections upon the appellants we cannot let them pass. What "conspiracies" have we charged that have not been in reality sustained, or if not, are now before the Court for its determination? In our bill we admitted the Teed scheme had been abandoned by reason of the protest of the older members of the Harmony Society, and our evidence simply related to Teed's presence in the society, as also of his female and male disciples; that they got money from trustees Henrici and Duss, and in many ways showed that this set of mercenary adventurers were in close touch with Mr. Duss, who subsequently took his young female cousin to Teed's house in Chicago [Record pp. 172-173], where she remained more than a year. The master says that there was no evidence of what kind of a man Teed was, or the character of his disciples, or the reputation of his society. Teed's record is so well known that we deemed it unnecessary to burden the record with evidence that was immaterial under our allegations. The Feucht bill, filed by the members of the Harmony Society, three of whom are defendants of record, openly charged that Mr. Duss was in collusion with Teed; hence, surely, the present appellants had such sufficient ground for such belief, and their good faith cannot be questioned.

In regard to Mr. Duss' collusion with Messrs. Hice and Reeves to relieve them of their entire liability to the Savings Bank it is clearly shown; one has only to read the master's report and appellee's argument to see that it was so. We again refer to pages 20 and 21 of our History of the Case.

In regard to the financial affairs of the society we again repeat that most of the trouble was occasioned by Mr. Duss not putting the bank at Beaver, Pa., into the hands of a receiver. *This was his manifest duty.* What right had he to take, without notice to his fellow members, or even with it, practically all of the investment funds of the society and put it into this despoiled bank? Suppose the Harmony Society had an interest in it? Even sup-

pose Trustee Henrici was a partner? Just how such a society could be a partner in an outside business concern, when under its Articles of Association there was unquestionably no power to more than *invest* in *stocks* and *bonds*. The society, as constituted, was intended to live within itself; its necessities were trifling in support of its members. Being a communistic society with agriculture as its foundation and manufacturing all they needed for their own use, it was only intended that surplus funds should be safely invested in outside securities, and there was no power to jeopardize the joint and indivisible stock by contracting joint and several liabilities with persons who were not members of the society. The real debt of the society, outside of the alleged bank liability at this time, was about three hundred thousand dollars, with over a million dollars of first class securities to meet it, as Mr. Duss' subsequent conversion of securities in less than a year clearly shows. Why, therefore, should Mr. Duss claim credit for absorbing all the well invested personal securities constituting part of the society's entire endowment fund? Why were the other partners in the bank not made to pay their share of the debts? By this time the debts are doubtless outlawed. Appellee's brief, page 196, states: "Hice and Reeves each owning one-tenth of the bank were financially weak and unable to assist." Not only did the evidence not show this, but on the contrary indicated they were persons of means and position.

The master places a forced construction upon the character of this liability by his saying it was a "demand" debt. It is more than doubtful if there were any liability for such indebtedness under the evidence shown in this case; but assuming that there was, or that there was a moral liability to pay the same, we respectfully contend that Mr. Duss had no power to act as liquidator of the society's indebtedness. He should have applied to Court for an official liquidation.

PAUCITY OF MEMBERS.

Equally insincere is Mr. Duss' answer to our charge that he had declined to take in a single member for eight years, which was most essential, owing to the death of fifteen members and his purchase of the interests of seventeen others.

Appellees say, page 179: "The number of the Board of Elders is reduced to eight and does include *all* the present living members of the society, but the appellants should not complain of this

because heretofore it was the exclusive nature of the board they objected to."

This attempt to be facetious is a poor argument. It admits that no members are left outside of the very board that was created to govern the membership, and it is admitted that there is not even a sufficient number to compose it, for the board under the Articles of Association, required seven elders and two trustees; but as this board is bereft of all power, and the surviving members are tenants to the Union Company, it may be well said that they are entirely capable of attending to all business that may come before them, for that is none. Again appellee says, page 179:

> "The fulfilment of the will of God can certainly, within limits, be as effectually done by the few as the many. . . . All the members will be as well cared for, as well taught in school and church, better looked after than when the membership ran into hundreds. . . . All this, a society composed of eight will do as well as one hundred and even do it better, for more attention can be given to each member." &c., &c.

Such a reply, to our charge that he refused to take in new members, and by this insidious means strangle the society is sustained by such an argument in its advocacy of few members. To counteract this he says further through his counsel, on page 210, appellee's brief:

> "Would any man or woman worthy of admission join the society when it meant an additional party defendant in this litigation? By joining he or she gave up all their property to the society and promised implicit obedience. Would anyone do this with a lawsuit pending in which it was claimed that all the property of the society should be distributed among all the descendants of members since 1836?'

And these are the answers to our charge that the door has been closed to all admissions. The first argument practically admitting it and the other an insincere and false plea, which the innocent never indulge in.

He says no one would join because they would have to give up all their property, and yet there is no evidence that a single member who joined in the past twenty years ever gave a cent, but on the contrary when Mr. Duss and sixteen others joined, a few years before we filed this bill (to fill vacancies caused by the death of old members), according to the evidence, none of them contributed anything except their labor.

What should so appall a new applicant? Free board, free lodging, free clothing, the rule against celibacy relaxed, an interest in five millions of dollars, which the living members, Mr. Duss says, have the right at any time to divide. Is this so alarming? Then too, if they were dissatisfied they could get "donated out" for five thousand dollars a piece, just as Leonard Hoerer was, who was only in the society ninety days. Would this be unsatisfactory? Then again, if we prevail in this proceeding they share equally with us. Would this be unsatisfactory?

Of course, the real answer, and it is so apparent to those who know the situation, is, that Mr. Duss intends winding up the society just when he sees his way clear to do so, and therefore he is too thrifty to take in a new member when by such action he voluntarily took away from himself and survivors a half a million of dollars. Even in the direct face of our charge, when one would suppose he would make every effort to take a member in, in order to refute our statement, he cannot bring himself to such an act of generosity.

Therefore we ask this Court, taking all the charges against Mr. Duss, material to the present assignments of error, is it not a fact that all are founded upon self evident truths, or are such that the reasonable inferences sustain us. When, therefore, appellees counsel says that all our charges are untrue and it is *"too bad"* to make such reflections, our answer is that most of them can be sustained out of Mr. Duss' own mouth, and upon the argument of his counsel.

COUNT DeLEON'S WITHDRAWAL.

In half a dozen places the appellee argues that the Count DeLeon's withdrawal gives a right to the present defendants to wind up the society and take all the property. The answer is a simple one. From 1805 until 1836 every member withdrawing could reclaim his contributions. Hence Count DeLeon, who left the society *in 1832*, having such a right at that time, upon withdrawal, took out, as he had a right to do, a valued appraisement of their contributions. The reference to Count DeLeon in the printed brief of our learned friend with its frequent reiteration is inapplicable to this case because the merger of all prior contributions given to the society was done four years after that withdrawal by the Article of 1836, wherein was created the joint and indivisible stock, and a prohibition placed upon members voluntarily with-

drawing taking with them any of the property of the society. Since then no member had a right to voluntarily withdraw and receive back his contributions or any other properties as a matter of right; but what occurred prior to 1836 we have no interest, and it matters not whether DeLeon's withdrawal was legal or not, for our rights were not affected thereby, and are based upon contract relations beginning thereafter.

APPELLEES NOW SEEKING TO REVERSE THE LOWER COURT.

Having failed to get a decision or even a dictum that made it absolutely safe to take this property (while claiming their right now to do it) except under the system in vogue of buying up the "interest" or "shares" of living members, and switching the assets into all sorts of shapes where it became less and less recognizable as trust properties of the society, the appellees now try a new course. As set forth in the preceding chapter, page 2, they assert a legal and equitable right to all the property and declare their power to dissolve for that purpose whenever they see fit to so do.

Judge Acheson held, page 195 of record:

> "It is unnecessary or would it be proper for the Court to express any opinion as to what would be the legal status and ultimate disposition of the property of the Harmony Society were its existence terminated by the death of all its members, or were the dissolution of the society otherwise affected."

On page 108, of appellee's brief, we note:

> "While Judge Acheson did firmly decline to take up and discuss the questions of law above named, the legitimate consequences of what he did rule affirm the propositions for which we have been contending, i. e., *that the assets of the society will go to the living members of the society at the time of its dissolution.*"

In other words, the learned Judge in the Court below did not really understand what the legal effect of his own opinion was, and that while he "firmly declined" to so rule, yet he did give the sole title to this property to the defendants and a *carte blanche* to take it whenever the spirit moved them.

The appellees took no exception and assigned no error to this ruling of Judge Acheson, but pretended they were entirely satisfied to continue the society forever. It seems to us clearly that they, having failed to assign error or take a cross appeal, the sole question for the Court on this point now is: shall the lower Court be sustained and the bill dismissed, or shall said Court be reversed on the grounds set forth in the appellant's Assignments of Error and a decree made in accordance therewith. To find affirmatively in favor of the appellees on a question decided against them in the lower Court would be most unusual. It is too late now, we respectfully contend, for these parties, after convincing the lower Court that they had no intention to dissolve the society to ask this Court to give it to them by a reversal of the lower Court. If our Assignments of Error are without merit the defendants cannot interject one of their own.

COSTS IMPROPERLY IMPOSED ON APPELLANTS. GOOD FAITH OF APPELLANTS.

In this proceeding the admitted next of kin seek the determination of certain questions affecting their right of inheritance. The matter is of equal importance to all the parties of record. The imposition of the costs upon the appellants therefore is inequitable. It was right for them to seek the judicial determination of these questions. The appellees likewise are equally interested in this proceeding.

The master "decreed that the plaintiffs' bill be and is hereby dismissed at their costs, including the commissioner's and master's fee. *The said costs however to be paid in the first instance by the defendants.*"

The master was allowed three thousand dollars and Mr. Duss paid the same. (Page 2 of Record.)

The Circuit Court said that "the bill alleges conspiracy, fraud and immorality," and therefore refused to relieve the complainants of the costs.

Independent of the monetary consideration, nothing in this case has so distressed the appellants and their counsel than the reason above given for the imposition of the costs by the lower Court.

Counsel for appellee, as is perhaps natural, has not been slow to use this feature of the case in every possible and conceivable

way. *But he goes too far*—because even with the scanty record that we have to vindicate ourselves with, it can be shown not only that no charge was made other than with absolute good faith, and we believe further that most of these charges can be shown to have such foundation as to warrant our assertion that they were true.

The conspiracies and frauds charged are fully treated of in a previous chapter in this brief and in our original brief, and we need only consider the one of immorality.

The evidence of the appellants, the master admits, proved that some of the members of the society were drunkards, and others guilty of adultery, *vide*, Record, page 178 to 181.

As to Mr. Duss: at the outset the very Court that imposed the costs upon us for charging immorality against him prevented our inquiring into them—saying: "With his alleged personal misconduct the plaintiffs have no concern;" and refused us such an examination, *vide*, Record, page 191.

It may be stated that the purpose of the appellants was to show Mr. Duss' record before he joined the society and his misbehavior therein, partly for the purpose of testing his creditability and honesty, and partly for the purpose of showing into what evil hands this old celibate society had fallen when its "spiritual leader" (under the Articles of Association) was a man of bad character and antecedents. All our offers of testimony on this subject were ruled out under objection; and notwithstanding what appellee's counsel says the master bound himself specifically in the stipulation wherein he was appointed that he would be bound by Judge Acheson's ruling heretofore cited, *vide* Record, page

The manner in which the Weggle-Kroll matter got in this case was when evidence was offered that the Board of Elders refused to discipline or expel drunken or immoral members. Considerable testimony was taken on this affecting the other members of the society, and it opened the door to this charge for it was shown that Mr. Duss' criminality with his cousin had been a matter of gossip in the society.

It had not been our expectation to refer to this matter under our present Assignments of Error, but the appellee's brief contains statements that we cannot let pass, and also omits some facts, that should clearly show the good faith of the appellants in making these charges. Of necessity now we are limited in our discussion of this question to the master's report, but with it and such of the

record as is printed we assert that the following appeared: That John Weggle, who worked on the Economy farm, testified to having found Duss in an act of criminal intercourse. Under a lengthy examination he gave a full and substantial account of it and how he happened to discover the parties. Some days later he was recalled for further cross-examination and recanted, saying that all he had first testified to was a base lie. It is here that the master, and appellees in their brief stop with their story, and nowhere in the master's report or the appellee's argument does it appear that afterwards the said Weggle was *indicted for perjury for recanting* and was convicted and sent to the penitentiary for having testified falsely when he thus recanted.

We now refer to our Forty-Eighth exception to the master's report, page 190 of the record, where the following appears:

"*Forty-eighth.* The master erred in excluding the offer of the record of the conviction and sentence of Weggle in the United States District Court showing his conviction for perjury in the recantation of his testimony charging Duss with the commission of said offense with said Fredericka R. Kroll."

The master also finds that our charge that Mr. Duss accompanied this young girl, who was at the time a member of his household, to Teed's retreat in Chicago, where she remained for more than a year, was a fact.

As we said, some of our offers of testimony to prove other charges against Mr. Duss were excluded, and as appellee's counsel says they were not, we reserve the right to bring these upon the present record if this Court deems them material; for, while we may have agreed mutually not to have all the testimony printed we surely are not bound to remain silent when opposing counsel goes out of his way to deny certain things that we say are in the record of the Court below.

This particular charge, upon which evidence was admitted, bore every evidence of truth. The charge therefore of scandalous accusations to justify the imposition of costs ought not to stand if appellants have offered testimony to sustain them, and if that testimony was admitted as relevant, as it was here, because the master has chosen to conclude that the testimony against us is to be accepted preferably to that offered to sustain them, matters not. Another master, or another tribunal might have, upon the same testimony, find or conclude the other way. Our good faith was amply sustained by the production of relevant testimony whether the master is convinced by it or not.

Consequently there being an entire absence of bad faith, we most respectfully contend, the question of costs should be determined in accordance with the rule, in such a case as this, namely, where the question to be determined by the Court is one of interpretation involving the disputed title to a large fund in which both contending parties are interested, costs should be imposed upon the fund and not upon the parties forced to ask for a judicial interpretation of the question, as well as the allowance of proper compensation for the counsel whose services were necessarily required in the premises.

Should this Court grant the relief prayed for in our bill—we most respectfully ask the Court to appoint its own receiver and master.

It is plain that a receiver should neither be Mr. Duss, or any of his intimate friends—for the necessity of a receiver investigating financial transactions covering the past ten years is apparent.

Likewise no delay should occur in the proper distribution of the assets among *all* those entitled thereto; as Mr. Duss is necessarily adverse to such a distribution he should have no voice in it. Such a partition and distribution might be prolonged indefinitely by those who would benefit by the delay.

S. SCHOYER, JR.,
GEORGE SHIRAS, 3RD,
Counsel for Appellants.

IN THE

United States Supreme Court,

No. **OCTOBER TERM, 1901.**

CHRISTIAN SCHWARTZ, a citizen of the State of West Virginia, ANTHONY KOTERBA, DAVID STROHAKER and ALLEN SHALE, citizens of the State of Ohio, and G. L. SHALE, a citizen of South Dakota,

vs.

JOHN S. DUSS, GOTTLIEB REITHMUELLER, FRANZ GILLMAN, CONRAD HERMANSDOERFER, EDWARD KELLERMAN, JOHANNA HERMANSDOERFER, SUSIA C. DUSS, KAROLINE MOLT, KATRINA NAGEL, ELIZABETH BECK, MARIA DIEM, BARBARA BOEH, FREDERICKA MUNTZ, DOROTHEA HOEHR, REGINA LAUTENSCHLAGER, CHRISTIAN RALL, HENRY HICE and JOHN REEVES, citizens of the State of Pennsylvania, and THE UNION COMPANY, a corporation, citizen of the State of Pennsylvania.

Brief for Respondents Against Petition for Certiorari.

We have filed herewith copies of the printed Argument for Appellees, presented to the Circuit Court of Appeals for the Third Circuit, which contains a full discussion of the various articles of agreement constituting the Harmony Society and establishing the rights and duties of its members, and, also, of the testimony bearing upon the various allegations of fact made by the petitioners, We cannot here undertake to repeat this discussion, but we must content ourselves with referring the Court to it for any information we fail to now set forth within the limits of this brief reply to petitioners argument.

History of the Litigation.

The plaintiffs are five persons who *never were, at any time, members of the Harmony Society.* They merely claim to represent, by consanguinity, the alleged rights of persons who were, at one time, (in each case very remote), members of the Society, and who died in membership, or withdrew from the Society many years ago.

The bill was filed June 27th, 1894. Under agreement of the parties and the order of the Circuit Court, the cause went to an Examiner and Master, February 28th, 1895. A very large amount of testimony was taken (about 3,000 type-written pages), and each side was allowed several days to discuss the questions before the Master. The Master held the case under advisement for about one year, and returned all the testimony to Court with his findings of fact, and conclusions of law, April 11th, 1898. After a most careful and elaborate consideration of all the testimony and all the questions of law, the Master found against the contentions of the plaintiffs upon every material question of fact, and every material question of law.

The plaintiffs filed fifty-one (51) exceptions to the Master's report. and several days were occupied by counsel in the argument of these exceptions before the Circuit Court.

The Court below (Circuit Judge Acheson), after carefully reading the entire evidence, overruled all the exceptions. approved all the findings of the Master and made a decree dismissing the Bill.

An appeal was taken to the Circuit Court of Appeals upon forty-eight (48) assignments of error, repeating the exceptions to the Master's report, and the whole case was again elaborately argued before Dallas and Gray, Circuit Judges, and Bradford, District Judge, and, by the unanimous opinion of the Court of Appeals, the conclusions of the Master and the Circuit Court were affirmed.

Such is a brief history of this litigation. The cause has been now pending in the lower Courts for six years; has been three times elaborately argued, and, upon each argument, the decision has been against the plaintiffs; and, yet, the chief reason, now urged by the petitioners for a fourth argument before this Court, is that the Master, the Circuit Court, and Circuit Court of Appeals have misunderstood their argument and contentions, and have not given them proper consideration.

This Court has said that the jurisdiction appealed to by this application is

> "a branch of its jurisdiction which should be exercised *sparingly and with great caution*, and *only* in cases of peculiar gravity and general importance, or in order to secure uniformity of decision."
>
> *Amer. Construction Co. vs. Railway*, 148 U. S., 383.

And, in respect to all contentions of fact made by petitioners, out of which their alleged right is supposed to arise, this Court has many times ruled that the Circuit Court and the Court of Appeals, having agreed as to what were the ultimate facts established by the evidence, this Court should accept their view as to the facts, unless it clearly appeared that they erred as to the effect of the evidence.

Stuart vs. Hayden, 169 U. S. 14.

These principles ought to be decisive against the present application.

Questions Involved.

The petitioners seek to recover a portion of the property of the Harmony Society. They claim this, *not* because of any direct property interest either pretends to have, or because either was, at any time, a member of said Society; but, because, as they allege, their ancestors, in more or less remote degrees of consanguinity or affinity, at some period long past, *were* members, and either withdrew from the Society, and since died, or died while still members, and because, they allege, the Society is dissolved and has been abandoned, and hence they argue, in the general distribution of its property, they each are entitled, on account of some right transmitted from their dead ancestors, to a share.

The two questions, therefore, are:

1. Is either one of the petitioners a part owner in the property of the Harmony Society and entitled to an interest therein, even if the Society were dissolved?
2. Has the Harmony Society been dissolved?

There is absolutely nothing in the case but the attempt to reduce into possession certain property rights alleged to belong to petitioners. The money value of the alleged interest of these five petitioners, which is all that is involved in this litigation, is comparatively insignificant. During the period of its existence of nearly a century there have been about eleven hundred members of the Harmony Society. If the contentions of the present plaintiffs were well founded, there would be, probably, twenty thousand "heirs" entitled to a share of the Society's property; and, accepting the valuation of the property at the figure named by plaintiffs, $3,000,000.00 (and the real value is, probably, not one-half of

this sum), the interest of these five plaintiffs in the aggregate would not exceed $750.00. The amount to be awarded these plaintiffs, if they succeed, is surely not sufficient to make this a case "of peculiar gravity and general importance".

The property right involved depends upon the the construction of certain articles of agreement intended to constitute a Communistic Society. These particular agreements, and similar agreements constituting like Societies, have been many times before various courts of the country, and the decisions are practically uniform upon all the questions raised. There never has been, and is not now, any contrariety of decisions upon the effect of such agreements. There is, therefore, no need of a fourth argument, and a prolongation of this litigation, "to secure uniformity of decision"

The decisions upon the articles of the Harmony Society, and similar articles of other Societies will be found reviewed upon pages 102 to 112, inclusive, of our Brief presented to the Circuit Court of Appeals herewith filed.

The Decisions Below Are Clearly Right.

I. No one of the petitioners, and no one of all their ancestors, ever contributed, granted or donated any property whatsoever to the Harmony Society.

The Master and both Courts below have so found as a fact, and there is now no pretense made to the contrary.

II. The petitioners can have no other rights than as the descendants of non-contributing ancestors.

It must be obvious that no one of the petitioners can have a higher or greater (even if an equal, which we deny) right in the property of the Society than the respective ancestors through whom they claim.

What was the property right of these ancestors?

Did their property right survive a withdrawal from membership in the Society?

Did their property right, upon death, pass, by descent, to the heirs or next of kin or personal representatives of the deceased members?

The petitioners' alleged property rights depend upon these questions, and these questions can be answered *only* by the terms of the articles constituting the Society.

Membership could only be had by signing the articles, and the articles fixed the rights and duties of members. There is absolutely no other evidence as to the rights of members.

There are, at least, six of these articles dated in the following years: 1805, 1827, 1836, 1847, 1890 and 1892. All of these agreements will be found printed in full in our brief in the Circuit Court of Appeals.

The material portion of each as bearing upon the right of property of the members we here give.

Agreement of 1805.

By Article I, the subscribers on their part,

"and on the part of our heirs and decendants *deliver up, renounce and remit all our estate and property consisting of cash, land and chattels, or whatever it may be, to George Rapp and his associates*, in Harmony, Butler County, Pennsylvania, *as a free gift or donation*, for the benefit and use of the community there, and bind ourselves on our part, as well as on the part of our heirs and decendants, *to make free renunciation thereof, and to leave the same at the disposal of the superintendent of the community, as if we never had nor possessed it.*"

By Article III it is declared:

"If contrary to our expectation the case should happen, and we jointly or severally could not stand to it in the community, and we would within a few or more years *break our promises and withdraw from the community.* for whatever cause it may be, *never to demand any reward either for ourselves or children or those belonging to us, for any of our labors or services rendered. but whatever we jointly or severally shall or may do, we will have done as a voluntary service for our brethern.*"

Article V:

"And if the case should happen as stated above, that one or more of the subscribers, after a short or a long period, should break their promise and could or would not submit to the laws of the church or community, and for that or any other cause should leave Harmony, *George Rapp and his associates to refund him or them, the value of his or their property*

brought in without interest, in one, two or three installments, as the same may be, large or small; *and if one or more of them were poor and brought nothing in the community, they shall, provided they depart openly and orderly, receive a donation in money,* according to his or their conduct while a member, or as he or their circumstances and necessities may require, *which George Rapp and his associates shall determine at his or their departure."*

Agreement of 1827.

This agreement declares its purpose to be,

"that the condition of membership should be clearly understood, and that the rights and privileges, and dutes of every individual therein should be so defined as to prevent mistake or disappointment on the one hand, and contention or disagreement on the other."

Therefore, all of the individual members by this agreement, for themselves, their heirs, executors and administrators, do hereby

"give, grant, and forever convey, to the said George Rapp and his associates, and their heirs and assigns, all our property, real, personal and mixed" * * * *"as a free gift or donation,* for the benefit and use of the said association or community; and we do hereby bind ourselves, our heirs, executors and administrators, to all such other acts *as may be necessary to vest a* **perfect title** *to the same in the said association,* and to place the said property at the full disposal of the superintendents of the said community without delay."

Article 3:

By this Article the subscribers provide that, if they do not render faithful obedience, or, from any cause, withdraw from the Society, in this case

"we do expressly covenant and agree to and with the said George Rapp and his associates, *that we will never claim or demand, either for ourselves, our children, or for any one belonging to us, directly or indirectly, any compensation, wages or reward, for our or their labor or services rendered to the said community,* or to any member thereof, but whatever we or

our families jointly or severally shall or may do, all shall be held and considered as a voluntary service for our brethren."

Article 6:

If any member, for any reason, withdraws from the association

"then the said George Rapp, and his associates, agree to refund to him or them *the value of all such property, without interest, as he or they may have brought into the commnnity* in compliance with the first article of this agreement, and the said value to be refunded in one, two or three annual installments, as the said George Rapp and his associates shall determine."

If the party brought nothing in, yet, if he withdraws openly, he shall

"receive *a donation in money*, according to the length of their stay, and to their conduct, and to such an amount as their necessities may require, *in the judgment of the superintendents of the association.*"

Agreement of 1836.

By this agreement, Article 6 of the Agreement of 1827, providing for the return of property donated to the community, upon withdrawal, is denounced, among other reasons, because:

"The principle of restoration of property, besides its pernicious tendency, is one which cannot now be enforced with uniformity and fairness, inasmuch as the members of the association, in the year 1818, under a solemn conviction of the truth of what is above recited, did destroy all record and memorial of the respective contributions up to that time."

Article 2:

"All the property of the Society, real, personal and mixed, in law or equity, and howsoever, contributed or acquired, shall be deemed, now and forever joint and indivisible stock. Each individual is to be considered to have finally and irrevocably parted with all his former contributions, whether in land, goods, money or labor; and the same rule shall apply to all future contributions whatever they may be."

Article 3:

"*Should any individual withdraw from the society, or depart this life, neither he, in the one case nor his representatives in the other, shall be entitled to demand an account of such contributions,* whether in lands, goods, money or labor, *or to claim anything from the society as matter of right;* but it is hereby left altogether to the discretion of the superintendents to decide whether any, and, if any, what, allowance shall be made to such member, or his representatives, as a donation."

George Rapp died on August 7th, 1847. His death led to the preparation and execution of the

Agreement of 1847.

By this agreement, the Articles of 1827, excepting Article 6, and the Articles of 1836, are recognized, re-established and continued,

"except so far as the same are affected by the death of the said George Rapp, or hereinafter altered or modified, and to this extent we declare the said articles to remain in full force."

Article 2:

We hereby ordain and establish a Board of Elders, which shall

"consist of nine members of the Harmony Society and their successors, to be chosen as hereinafter provided."

Note: There is nothing to prevent a woman from filling the office of elder.

Article 3:

The Board of Elders shall have and exercise the following powers, to-wit:

"1st. To regulate and manage exclusively the internal temporal concerns of the Harmony Society; to appoint and remove superintendents in the several departments of industry; to make regulations and give orders in relation to their business operations, and generally to take care that members peform the duties assigned to them.

2nd. To determine atl disputes and misunderstandings amongst the members of the society; to advise if necessary, reprove any member who may be in fault or found delinquent in his duty.

3rd. To admit new members into the society and to expel them therefrom. New members when admitted shall subscribe this agreement as the evidence of their membership, and of the rights acquired by, and the duties imposed upon them.

4th. To established regulations for the maintenance and improvement of the morals of the society and for the instruction of its members.

5th. To appoint one or more of its members spiritual leaders and instructions with such authority in relation to church discipline as shall be conferred by the board.

6th. To remove from the Board of Elders and to declare his seat vacated, also to remove from office either or both of the trustees hereinafter appointed for the management of the external affairs and their successors in office.

7th. To fill all vacancies in the Board of Elders occasioned by the death, resignation or removal from office any of its members and their successors, and so as often as a vacancy shall occur, to fill all vacancies in the office of trustee, when either or both of the trustees or their successors shall die, resign his office, or be removed from the same, and so often as a vacancy shall occur.

8th. The concurrence of six members of the Board of Elders shall be deemed the act of the board and a legal exercise of any of the powers hereinbefore conferred on the said board."

Article 4:

"We do further ordain and establish a Board of Trustees for the exclusive management of the external business and affairs of the society, which board shall consist of two persons, who shall be members of the Board of Elders, and their successors who shall be appointed as hereinbefore provided."

Article 5:

"The said trustees shall jointly *and severally* have and exercise the powers following, to wit:

1st. In their own names or that of either of them, or otherwise, to purchase *and sell*, deal, barter, exchange and traffic, make all contracts and bargains in the prosecution of the business, to invest the funds in stocks and other securities, and make transfers and assignments, to collect debts, receive and pay out moneys, settle claims, compromise disputes, insti-

tute legal proceedings, appoint and dismiss agents, clerks and attorneys in fact, and at law, and generally to transact all the external business affairs of the society.

2nd. *To make donations to seceding and excluded members* and to the representatives of those who are deceased and for such benevolent and charitable purposes as they may deem prudent and fit.

3rd. The said trustees shall have power jointly to purchase real estate in their own names and also in their joint names *to grant, bargain, sell and convey all or any of the lands and tenements now or hereafter owned by or belonging to the said society*, and for this purpose to execute deeds of conveyance in fee simple or otherwise in their joint names, but the proceeds of all such sales shall be held in trust for the society."

Under these agreements, and especially since 1847, the Trustees carried on and engaged in almost every conceivable business. They were oil producers and oil refiners, manufacturers of glass, iron, steel, and all kinds of hardware and cutlery and files, of cars, of woolen goods, of silk goods, of bicycles, of whiskey, of beer, of wine. They laid off plan of and sold lots, and, really, built Beaver Falls thereby. They ran saw mills, great and small. Were largely in the timber business and coal business. They built railroads and were a large factor in the construction of the Pittsburgh & Lake Erie Railroad. They organized a bank, and for years it was one of the largest in Western Pennsylvania. They did business in their own names and the names of others. They had agents and partners. They did all this prior to 1890, during which period, the bill in this case, says the society was perfectly conducted.

Under any, or all, of these agreements, it is as plain as human language can make it, that no member had any individual, specific right in, or claim to, any of the property of the Harmony Society. The sole right the individual had was as a member of the community, and that was a common right, and several only in what the covenants of the agreement gave him. These are attending religious meetings and instruction in church and school, etc., in consideration of which the society would feed, clothe, maintain and educate each for his or her life, and their families after them, so long as the joining member or his family continued in the society. If he die, and leave family, they shall be provided for. His with-

drawing from the society rendered it impossible for him to insist upon the performance of the covenants by the society. If no property had been contributed, a donation in money, to be fixed in the discretion of the superintendent, was to be given; but the rights of the individual all are personal; they ended with his or her death or withdrawal; he or she never did have any right to any of the property of the society, *except through and as a part of the society*, and when he or she died or withdrew, neither his or her heirs or personal representatives had any right or claim to the same.

The petitioners concede that their alleged rights of property are based *only* upon the agreement of 1836; that they could have no claim under the other agreements.

As well as we can understand their brief, they assert their right under the Articles of 1836, because, by that agreement, the property of the Society was made "joint and indivisible stock;" that, for one reason or another, the Society was incapable of taking, and the trusts upon which the property was held for the community were void, and, in their own language,

> "the property covered by the trusts, necessarily reverted to the donors of the trust properties, if living, and to the heirs and representatives of those who died *members of the Society.*"

Be it so: it is established as a fact that none of the ancestors, through whom the petitioners claim, were among the donors of any property held by the Society before, or since, 1836.

It is obvious that this claim is made *through the membership* of the ancestor, but if the ancestor's membership was in a Society for any reason incapable of taking or holding, it is impossible that such membership should be capable of transmitting any property right whatsoever. Claiming through, and only through, the Society, this argument of the petitioner's is like the pig, that, in swimming, cuts its own throat.

The Agreement of 1836 was primarily and chiefly intended to strike out the 6th article of the Agreement of 1827, which provided for the return to the seceding member of the value of all his property brought into the Society.

It, therefore,

(a)—Annulled the 6th article and made it void;

(b)—Enacted article 2 as follows:

"All the property of the Society, real, personal and mixed, in law or equity, and howsoever contributed or acquired, shall be deemed now and forever joint and indivisible stock. Each individual is to be considered to have *finally and irrevocably parted* with his contributions, whether in lands, goods, money or labor, and the same rule shall apply to all future contribution whatever there may be";

(c)—Enacted article 3 as follows:

"Should any individual withdraw from the Society, *or depart this life*, neither he, in the one case, nor his representatives, in the other, shall be entitled to demand an account of said contributions, whether in lands, goods, money or labor, *or to claim anything from the Society as a matter of right*. But it shall be left altogether to the discretion of the Superintendent to decide whether any, and if any, what allowance shall be made to such member, or his representative, as a donation".

No portion of the Agreement of 1827 was changed, except the 6th article, unless such change be introduced by articles second and third just cited.

How is it possible for the petitioners to derive a title through this agreement of 1837?

They now claim to represent:

(a)—Persons who died in the Society;

(b)—Persons who left the Society.

How can they, against the plain words of this agreement, claim to recover anything whatever?

These words are:

"Neither he in the one case *nor* his representatives in the other, shall be entitled to demand an account of said contributions whether in land, goods, money or labor, *or to claim anything* from the Society as a matter of right".

The argument of the petitioners is that because in this agreement, in article second, it is said:

"All the property of the Society, real, personal and mixed, in law or equity and howsoever contributed or acquired, shall be deemed now and forever *joint and indivisible stock*,"

that this, in some way, gives them an interest in the property which they did not gain under the Agreements of 1805, 1821 and 1827.

And they claim this, also, in the face of the above provisions and the other portion of this article, which says that

"each individual is to be considered to have **finally and irrevocably** parted with all his former contributions, whether in lands, goods, money or labor, and the same rule shall apply to all future contributions, whatever they may be."

If each individual has forever parted, as this agreement says, with all his former contributions, whether they be represented by lands, or goods, or money, or labor, and that same rule shall apply as to all *future* contributions, how is it possible for his heir or representatives to gain, after his death or withdrawal from the society, any title to this property?

The agreement does say that the entire property shall be considered as

"joint and indivisible stock."

But how does this change the equitable title and right which the society always had to its property? Was it not always joint and indivisible? Did not all the covenants and all the agreements provide that a party dying or leaving, lost all his right, title and interest in and to the common property except that, under the Agreement of 1827, he might have returned to him the value of his contributions?

The Agreement of 1836, saying that it shall be regarded as joint and indivisible stock, in no way changed the title by which it was originally held under the Agreement of 1805 and 1827, and the individual member and his heirs or representatives, after his death or withdrawal from the society, gain no other or greater right than they had under the Agreements of 1805 and 1827.

Indeed, the language of the Agreement of 1836 seems more specifically to bar out these petitioners than that of the other two agreements.

Nor should it be overlooked that, as the society changed in membership from 1805 down to this present date, the members constituting at any one time the society changed their agreements, bought and sold property, made donations, and acted as if they were—as, indeed, they were—the actual owners of all of its property. This was a practical construction of the agreements which should now be of controlling influence.

Topliff vs. Topliff, 122 U. S., 131.

Positions As to the Nature of the Title by Which the Society Held Its Property.

The petitioners admit that *prior* to 1836 no one of them contributed any property of any kind to the society, and the Master has found that no one of them did *since* 1836.

Now, if this be so, let us grant, for the sake of the argument, that the petitioners are right, *i. e.* that the society could not take any title at all to its property.—or that any trust created for it is void,—or that if the trusts are good, they violate the rule against perpetuities—or that the title is a base or conditional fee—how, in any one or all of these contingencies, are the appellants benefited?

If the society has no title to its property, the petitioners can claim none, for it is only through such society that it can reach the property.

If the trust created for the Society is void, or if the trust is good but violates the rule against perpetuities, or if the title is merely a base or conditional fee, how is it possible for the petitioners to benefit thereby?

No one of the petitioners contributed any property whatever.

If the property reverts, it would be to the original grantors, and no one of the petitioners is a grantor.

It seems extraordinary the efforts the petitioners have made to attack the title of the Harmony Society and its Trustees to this property, for it is only through theSociety, as the *bona fide* owner of the property, that they can recover at all. If they could succeed in demonstrating that the title was defeasible and not good, they would effectually, as the Master says, destroy their own case.

Nature of the Title the Trustees and Members of the Society Have.

The original deeds for the property of the Society were all made in fee simple to Frederick Rapp.

In no instance was there any trust or use declared on the face of the deed. The title was absolute and unqualified in Frederick Rapp.

Frederick Rapp did declare that he held the property in trust for the Society by a separate paper.

All the other conveyances to George Rapp, who succeeded Frederick Rapp as the agent, and then to the different trustees ap-

pointed under the Agreement of 1847, gave an absolute title, in fee simple, and without any trust declared.

The title to all the real estate is conveyed to the trustees in fee simple. It is, in each instance, an absolute unqualified estate in fee, without limitation of any kind. It is not conveyed upon any condition of any kind. No one of the members of the Harmony Society ever conveyed, so far as this case shows, any real estate to the Society, but, if any one did, it was just as absolute a conveyance, as shown by the different agreements.

The grantors of all the real estate parted with all their title to the tracts of land conveyed. They were conveyed to the trustees and their heirs.

It is true that, beginning with the original declaration of Frederick Rapp, in 1834, (Record, Vol. 4, p. 619) followed by George Rapp's appointment in 1834, (Record, Vol. 4, p. 613), and this by the Agreement of 1847, the agent and trustees in each instance declared that the property conveyed to them

"is and shall be deemed the common property of said Society."

The

"*said* Society"

as the agreements all show, were the persons who were in membership and constituted part of it.

McKennan, C. Judge in the Speidel case, 15 Fed Rpts., 753, speaking of what this trust was, and for whom, said:

> "The trust alleged here was *instituted for the equal and exclusive benefit of the members of the Harmony Society.* It was part of the religious as well as secular policy of the Society. *Fellowship in the Society was the only recognized title to participation in its benefits. When that fellowship ceased, from whatever cause, all further interest in the trust and all the privileges of membership were necessarily lost and were denied.*"

Mr. Justice Gray, in the same case, said (120 U. S., 377):

> "The trust on which Rapp and the defendants (the trustees) as his successors held the common fund of the Harmony Society is described, in one place in the bill, as for the members of said families, and the contributors of said fund, and for their common benefit, that is to say, as is clearly explained by what goes before, in trust for their common benefit *as a*

community, living together *in the community*, working for the community and supported by the community."

The Harmony Society, composed of those who at the time were its members, were the *cestui que trustents* of the trustees, in whom stood the absolute fee simple legal title to the property. Each one of these members, so long as, *and only so long as*, he was a member was one of the *cestui que trustents*. Whenever he ceased to be a member the *use* shifted from and left him, *because* the very foundation and condition of its existence were taken away. When one became a member of the Society, the *use* for him sprang up and *shifted* so as to include him among the members. When he ceased to be a member the very agreement he signed, by which he became a member, terminated and ended the trust or use.

In *2 Washburn on Real Property*, page 669 (fifth edition), title "Shifting Uses", he uses, as an illustration of them, as follows:

> "An example of a shifting use, as given by the courts, is a grant to incorporate proprietors of land on which it was intended to build a church, *habendum* to said proprietors, &c.; and to each and every person who may hereafter become the lawful owner and proprietor of a pew in said house to be built thereon by said proprietors, the use would legally shift to those who should thereafterwards become pew-holders."

In the Society's Agreement of 1847, provision is made for the admission of future members by the Board of Elders.

Under the original agreements, always, by consent of all the Elders, new members could be admitted.

To the Trustees, say, a parcel of land is conveyed on April 1st, 1870; they hold the same in trust for the members of the Society as such, so long as each continues to be a member. Each member was and is a *cestui que trust*. As a part of and a member in this Society each had such a title as would enable him to compel the use of the real estate for the purposes of the Society and the fulfillment of the covenants contained in the written agreements of all the members.

When a new member came in, a use *shifted* to or sprang up for him, and he became, so long as he was a member, one of the *cestui que trusts*.

When any one left the Society, and thereafter ceased to be a ember of it, the use or trust he had shifted from him to his fellow-embers of the Society. As Judge McKennan says, *ante*, the trust as

"for the equal and exclusive benefit of the members of the Harmony Society."

As Judge Gray, in the same case, said, *ante:*

"in trust for their common benefit as a community, living together in the community."

See, also, *Kerr on Real Property*, vol. 2. sections 1662, 1663.

Quite an instructive case is that of *Second Congregational Society vs. Waring, et al.*, 24 Pickering, 304, which was again considered in the case of *Packard vs. Ames*, 16 Gray's Reports, 328. The opinion in the latter case is short, and we quote it as follows:

"Bigelow, C. J. The construction of the deed from Joseph S. Packard to Micha Packard and others, proprietors. was considered by this Court in *North Bridgewater Congregational Society vs. Waring*, 24 Pick., 304. It was there held that an estate in fee vested in the grantees to the use of the proprietors of pews therein designated, the use shifting to such as should thereafterward become pew holders. No intimation was there made that the conveyance was on a condition subsequent. Nor, on careful consideration of the terms of the grant, can we see any valid ground for holding that such is the true interpretation of the deed. There are no apt or proper words to create a condition; there is no clause of re-entry or forfeiture, The only words which bear any semblance of an intent to restrict the title conveyed by the deed are found in the habendum. These are merely that the grantees, the proprietors of pews, should hold the estate for the purpose of erecting and maintaining thereon a house for public worship. But we know of no authority by which a grant declared to be for a special purpose, without other words, can be held to be on a condition. On the contrary, it has always been held that such a grant does not convey a conditional estate, unless coupled with a clause for the payment of money or the doing of some act by the grantee, on which the grant is clearly made to depend. Without some such clause a grant for a specific purpose can be held at most only to create a trust, but not an estate on condition. *Co. lit.*,

203*a*, 203*a*, 204*b*, 214*b*. *Shep. Touchst.*, 123, 124, 133; *Cowper vs. Andrews*, Hob., 41; *Norfolk's Case*, Dyer, 138*b*. Exceptions sustained."

The Supreme Court of Pennsylvania in *Methodist Church vs. Old Columbia Co.*, 103 Penna. St., 614, cites and approves this case.

Are the Harmony Society Agreements and the Mode of Life of Its Members Contrary to Public Policy?

The petitioners allege that the agreements and mode of life of the society are against public policy, and they specify the following reasons:

That the jurisdiction of the patriarchy extends to municipal control in a manner antagonistic to the constitutional system of the State respecting communities.

That the civil rights of the individual are vested in the patriarch.

That there can be no individual wealth, and, therefore, no "individual contracting."

That the obligations of civil duty are controlled by the patriarch.

That the scheme involves a system of labor which would bring disastrous competition against free labor and is allied to slavery.

> "That the members are concreted into an individual designated as a community, and hence they are not equal before the law, nor are they free, nor does their situation at all brings them within the declarations which are the foundations of the government."

That if the scheme should be successful for a long period, the society would absorb vast amounts of property, and thus defeat the collateral inheritance tax and the law in reference to the distribution of the estates of descendants.

That a community of persons thus isolated and differentiated in all the functions of civil life is against the policy of the law;

That the law condemns celibacy and the non-intercourse of married persons;

That the law also condemns a community of goods, it is socialistic;

That the society could not be incorporated under the laws of Pennsylvania.

Under the agreements each individual had no assignable stock;

The society concentrates, in itself, the wealth which individual contributions and labor pour into its coffers;

And that for these, and many other reasons, the trust in favor of the society must be declared void.

Agreements and Mode of Life Not Contrary to Public Policy.

Every man and woman in the United States may freely live, and agree with each other to live, the life that he or she prefers, provided that such mode of life is not prohibited by the constitution or the laws enacted thereunder.

What portion of the Federal or State Constitution, or of the laws of the State of Pennsylvania, or of the United States, do the agreements of the Harmony Society contradict or its mode of life infringe?

In one aspect it may be regarded as analogous to a partnership; but what law forbids men and women forming a partnership with agreements similar to those of the Harmony Society?

What law forbids the practice of celibacy?

What law forbids a man or woman contracting to work for a partnership or work for a community for boarding, clothing, etc. when he or she so long as they remain in the community is a part owner of the wealth created by his or her work and the work of every one else?

In what respect is the creation of a Board of Elders, giving them supreme authority as to the internal regulations of the Society, contrary to any law? Somebody must be governors or rulers. Indeed, under the corporation laws of Pennsylvania and the limited partnership laws such management is committed to the Boards of Directors and Managers.

If the corporation law provided that a Board of Managers or Board of Directors should remain in office for twenty years instead of one, how would that conflict with the laws of Pennsylvania, or of the United States?

The Harmony Society agreements do not pretend to interfere with any of the laws of the State in reference to the State control all the civil and political functions of life.

The Town of Economy is located in a township called Harmony, and it is, so far as the State laws are concerned, governed and controlled exactly as any other township in the State. Each individual member of the Society has the same civil and political rights to vote for all Township, County, State and United States officers as any other citizen of Pennsylvania.

In what respect does the community of goods violate any constitutional provision?

All the property so communed is liable to the gneral laws of the State governing its acquisition, sale, descent, and distribution. It is subject to taxation for United States, State, County, and Township purposes.

The Agreements of the Harmony Society do not, in any way, exempt a man from or take from a man any one of his civil or political duties or rights.

There is no limit as yet under our constitutions to the acquisition of wealth, and nature, working through general laws, has proved that the ideas of vast and practically unbounded wealth to be gained by a society of this kind are false. The wealth of the Harmony Society, as the testimony shows, has been grossly overestimated, and, to-day, is not one-half of the value of $3,000,000, put upon it by petitioners.

Neither the Shakers, Separastists, Zoarites, Society of Believers, Oneida Community, nor the Economy Society, have made such a brilliant worldly success, especially in America, as would constitute a menace, by the acquisition of vast wealth, to the polity of the State of Pennsylvania or of the United States.

Certainly, the Harmony Society has been a great blessing to Western Pennsylvania. It has built up industries, built railroads, cut down and marketed forests, laid off farms, built towns, and, in various ways, added to the progress, development and civilization of our people.

Each member of the Society, while he remained a member, had an interest, as a use or a trust, in the property, and he, undoubtedly, could have called his fellow members and his trustees to an account if they violated the good faith pledged to him by the Articles of Agreements creating the constitution of the Society.

The petitioners have not cited a single case sustaining their position that these agreements are against public policy, but, on the contrary, the Supreme Courts of Pennsylvania, Massachusetts,

Maine, New York and Ohio, the Supreme Court of the United States, and the Circuit Court of the United States, have all affirmed the validity of the Harmony Society agreements, and agreements framed similar thereto.

Charges Against Mr. Duss.

The charges in the Bill of Complaint against Mr. Duss individually are many and severe.

If the Court will read paragraphs 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 and 26 of the Bill it will find a collection of charges, *each and every one* of which the Master has found to be false, and the Courts below have affirmed the finding of the Master.

With a maliciousness suggested by personal hatred, the plaintiffs have been induced to insert in the Bill these outrageous charges against Mr. Duss, and they, when called upon the stand, each and every one of them, admitted that they had not any personal knowledge as to the truth of any one of these charges.

The charges contained, among other things, an averment (paragraph 12 of the Bill), that Duss was the friend and confederate of Dr. Cyrus Teed, who was a notorious libertine and presided over an institution in Chicago filled with depraved women, whom he called his angels, and he was designated as the "Messiah," and then the averment is:

> "From the entrance of said Duss into the Harmony Society it had been his design to admit the said Teed and his entire collection of notorious men and women into the Harmony Society, thereby converting this old and religious celibate Society into one closely allied with the free love doctrines of the Oneida and Mormon communities."

There was not a single word of testimony to justify this charge.

Not a *single* word.

The Master and the Court below found it utterly untrue.

But more horrible still, the Bill charged Duss (paragraph 24) to be

> "a man of bad moral character, and is as such utterly unfitted to act as the Scriptural Adviser and head of a religious society; that the said Duss, in addition to holding so-called religious

views utterly at variance with the creed of said Society, had been guilty of gravest duplicity with his cousin, Fredericka R. Kroll, a young girl of some eighteen years of age, formerly a member of his household. in secretly taking her to the Teed residence in Chicago, where she is continually surrounded by the depraved and wanton women who compose the majority of Teed's so-called 'Angels.' "

The witness who offered to support this charge was a defeated suitor against the Harmony Society. His evidence was plainly false upon its face, and he subsequently appeared before the Master and admitted, and stuck to his admissions under the closest cross-examinations, that the entire charge which he swore to was false, and he had been guilty of the most barefaced perjury.

His testimony had, in addition, been overwhelmingly met by that of numerous witnesses called by defendants. Miss Kroll and Mr. Duss both denied it *in toto*. The circumstantial evidence demonstrated its falsity. The Master found against the allegations of the Bill, and the Court below was so impressed with the falseness of this unsupported charge, that it went out of its way and said, after disposing of the case on other grounds, as follows: (see page 359, vol. 1 of the Record):

> "*And now before closing we deem it to be our duty to declare that after the most careful scrutiny of the evidence, it is our judgment that the charges of immorality made against John S. Duss, the senior trustee, in the twenty-fourth paragraph of the Bill, are not sustained by the evidence, but are disproved.*"

Equally baseless are the charges against Mr. Duss that he has conspired to dissolve the Harmony Society and appropriate its property to himself and his confederates.

A brief history of Mr Duss' connection with the Society is as follows:

For many years his mother had lived in Economy, and she finally joined in 1887, at Mr. Henrici's request, the Society. Mr. Duss lived, when a boy, for some time at Economy, left there and went to Mt. Union College, and afterwards went west and married and engaged in one or more occupations for his support. Jacob Henrici, the senior trustee, wrote for him to come back to Economy, and, in accordance with this letter, Mr. Duss returned with Mrs. Duss, with her two children, in 1889. The Society appointed

him as school teacher, and soon afterwards, at Mr. Henrici's and Mr. Lentz's request, he, and subsequently his wife joined the Society, Vacancies occcurred in the Board of Elders and in the Board of Trustees, and Mr. Duss was elected to both, being chosen junior trustee on July 29th, 1890. Prior to this, the external business of the Society had been controlled by Father Henrici and Mr. Lentz. They, however, kept no books, and there was absolutely no record in the Society to prove what property the Society had or what the Society owed. Father Henrici (as his statement published, Record, vol. 3, pages 583 to 597, will show) had peculiar notions in reference to the manner in which the property of the Society should be used, and the result was that he had, prior to July, 1890, dissipated much of the property of the Society, and had involved it very largely in debt.

With the creation of these debts Mr. Duss had absolutely nothing to do, but, during the first year of his trusteeship, he became more and more suspicious as to the financial condition of the Society, and, after a most careful examination, he discovered, to his horror, that the Society was in debt about $1,500,000. Much of this debt was represented by negotiable paper and held by the different banks, and a large part of it, aggregating nearly $1,000,000, was due to the depositors of the Economy Savings Bank, which was a private partnership between Henrici and Lentz, trustees, and Judge Hice and Mr. Reeves, and was authorized by powers of the trustees under the Agreement of 1847, as see *ante*.

The cash assets of the Society had been pledged with the outside banks, and Mr. Duss faced the peril of almost immediate insolvency unless he could realize sufficient money to control the restless creditors.

In this dilemma, James Dickson, an expert accountant, was employed to open and keep a set of books, and to arrange for a system of keeping the accounts of the Society, and Judge Hice and Mr. J. Twin Brooks, Second Vice-President of the Pennsylvania Company, were enlisted for assistance and consultation with Mr. Duss.

In December, 1892, all the members of the Society signed a paper authorizing the Trustees, Henrici and Duss, to give a mortgage on the property to borrow money, and, accordingly, a mortgage was given to Harry Darlington, Trustee, and the Society obtained $400,000.00, and this was subsequently followed by a mortgage, in

February, 1893, for an additional $100,000.00, and this money, with other moneys obtained from the successful handling of the cash assets of the Company, enabled Mr. Duss to pay off the entire debt of the Society, to save the Economy Savings Bank from closing its door, and to save for the members of the Harmony Society a large part of their landed estate, subject, however, to the $400,000.00 mortgage above mentioned.

While the Society was in this greatest peril of its life, and while Mr. Duss, with the assistance of Judge Hice and Mr. Brooks, was making every effort to provide money to pay the depositors at the Economy Savings Bank, *Henry Feucht*, one of the members of the Society, on February 10th, 1893, with several other members that he induced to join him, filed a Bill in Equity in the Common Pleas of Beaver County, making numerous charges against Duss, and asking for the appointment of a Receiver and the dissolution and distribution of its property. This Bill precipitated and caused a run on the Economy Savings Bank, and very nearly neutralized and defeated the efforts that Duss had made to save, at least, a portion of the assets of the Society.

The case came on for hearing in the Common Pleas of Beaver County, and, after a hearing, and on March 3rd, 1893, the Court refused a motion for a preliminary injunction.

The Feucht family, the plaintiffs in the bill, and especially Henry Feucht, who has been the aspirant for the position on the Board of Elders and on the Board of Trustees which Duss subsequently obtained, caused such commotion and trouble in the Society, that it was concluded that it was better to have them retire, even if the donation which the Trustees were authorized under the Agreement of 1847 to give to any retiring member was large. The Feuchts did exact from the Society in its then involved condition a large amount of money, but all the other plaintiffs in the Feucht bill, being Dorothea Hoehr, Regina Lautenschlager, Edward Kellerman and Christian Rall, remained with the Society, alleging that they had been induced to sign the bill by misrepresentations.

The Feucht litigation, as the Master found, and as the facts fully demonstrate, stirred up the members of the Harmony Society and caused a number of them to withdraw.

It is not true that any one of them withdrew at the instance or at the request of Mr. Duss. On the contrary, it is true that Mr.

Duss endeavored to prevent a number of them leaving the Society, and, especially to prevent all of those who were valuable members.

He labored with Siber, Miller, Niclaus and Fredericks to stay, but one and all, frightened by the Feuchts litigation and fearing the insolvency of the Society, withdrew, and, upon their withdrawal, the donations, under the Agreement of 1847, were fixed approximately at but little less than the amount paid the Feuchts.

The public press became full of discussion as to the financial condition of the Harmony Society, its large debt, and the internal commotions, and reported at length the litigation in Beaver County.

The result of it all was that Henry Feucht, seeing that Mr. Duss had, at last, succeeded in rescuing the Society from insolvency, and with the most bitter and revengeful feelings against him, stirred up this new litigation, and, after the litigation began, was the star witness for the appellants throughout the case.

To him the testimony traces these scandalous charges against Mr. Duss, and it is not too much to say that his personal animosity towards Duss, and his revengeful feelings, because of Duss' success in the Society, were the causes of this litigation. At least, if not the causes of this litigation, the causes of the bitter charges that were made in the bill.

As to the charges against Mr. Duss of intention to wreck the Society, the Court below, expressly approved by the Circuit Court of Appeals, has said.

> "In respect to the alleged conspiracy to wreck and dismember the Harmony Society, we feel called upon to say that we fully agree with the conclusion of the Master. The acts here principally complained of, we think, designed, not to destroy but to save it from the consequences of business mistakes *made by none of the present officers* or members of the Society, and for which none of them are at all responsible. The measures resorted to in the emergency which was upon the Society were successful in extricating it from great financial peril. Those measures were adopted and carried out under the advice of eminent counsel, whose rectitude of purpose the Court cannot doubt."

The Membership of the Harmony Society, by Reason of These Withdrawals and Deaths, Has Dwindled Down to Nine Persons. No New Members Have Been Admitted Since 1893.

Not a single person, since the Feucht litigation in 1893, has applied for admission to the Society. That litigation, and the trouble resulting therefrom, and the present litigation, threatening the very life and existence of the Society, have been an absolute bar to any desirable and responsible people applying for admission to its fold.

It is true, perhaps, that the tramps that line the highways would even now, or at any time since 1893, have come into the Society, but it is equally true that they would have been undeserving members and prejudicial to the best interests of the community.

The charges and insinuations that Mr. Duss is conspiring for his own survivorship in, and thus become the owner of, all the property of the Society, is as baseless as were the charges in the bill as to his moral character. He is a gentleman of firm and decided character, whose task in life, it seems, has been to stand up for the right as against the most unfounded charges and slanders, and even against perjury itself. He has stood manfully for the Society and the interests of its aged members, who, if Feucht and the others, including the petitioners, had their way, would have been turned out to starve.

Mr. Duss joined in January, 1890. He became a member of the Board of Elders at the same time, and subsequently fifteen new members joined in 1890.

In 1892 three new members joined.

In 1893, one new member.

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The Dissolution of the Society.

The Master treated this question at length, as did the Court below, and, closely examined, it utterly fails to show the least sign of the dissolution of the Harmony Society.

The bill said it was dissolved in two ways:

(1) By the common consent of its members; and.

(2) By the abondonmant of the principles for which it was organized.

(1) Was it abandoned by common consent, as shown hereinbefore?

There is not a particle of evidence to support this.

On the contrary, the written Agreements of 1890 and 1892 expressly assert to the contrary.

(2) Has it been dissolved by the abandonment of the principles for which it was organized?

The Master and both of the Courts below, after reading the entire testimony, have found as a fact that there has been no abandonment of either principles or purpose. This is a question of fact wholly dependent upon a large amount of testimony offered on the subject, and, after the careful consideration thereof given by the Master and the Courts below, this Court will surely regard the discussion as closed.

Partition of Property.

The payment to retiring members is said to have been a liquidation and the dissolution of the Society.

As we have seen, the members who at the time constituted the Society were the absolute owners, through themselves and their trustees, of all its property, and they might at any time dispose of it. The idea that, because they gave to certain retiring members certain sums of money, therefore, this was a dissolution of the Society, is difficult to see. If the Society owned the property they might do with it as they saw fit, and, no matteer to whom or for what they gave their property, it was their own, to do with as they liked.

Besides the Agreement of 1847 authorized the donation to retiring members.

The Union Company.

Under the Agreement of 1847 the Trustees had the power to change realty into personality, and personalty into realty.

For reasons explained by Mr. J. Twing Brooks and Judge Henry Hice, it was deemed advisable to convey the title to the real estate to the Union Company, a corporation of the State of Pennsylvania, giving to the Trustees of the Harmony Society all the capital stock except so much as would make eligible members of the Board of Directors, the stock loaned for this latter purpose being in the shape of certificates endorsed in blank and left with the Harmony Society.

The Society after the conveyance owned the stock, *all of it*, and, therefore, owned all the assets of the Union Company. They did not convey to the Union Company as a part of the liquidation, and it in no way deprived the Society of any portion of the property which theretofore the Society had owned. It was a mere change in the mode in which the title was held.

Celibacy.

The claim of the petitionersbeing that Mr. Duss and his wife have abandoned celibacy, is wholly untrue.

They do live at the Great House, as did Father Rapp and his wife in his day, his daughter and granddaughter, but there is absolutely no testimony that they live together as man and wife.

Henry Feucht, plaintiffs' chief witness, testifies, page 463, Vol. 2 of the Record, that he was born during the time that his father and mother were members of the Harmony Society, and that, in addition thereto, his brother and sister were also born during that time, and prior to the death of Father Rapp.

Page 464:

> "Q. Was that during the time that your father and mother were members of the Harmony Society that they had four children?
>
> "Yes, sir."

Yet it is now argued by petitioners that celibacy was always a cardinal doctrine of the Society.

Upon this question of dissolution, the Court below, confirming the Master, said:

> "The proofs show that the Society is in full life. *There has been no dissolution of the Society, either by the common consent of the members, or by their acts* The membership, indeed, has become greatly reduced, but the right of the Society, as now constituted, are as sacred in the eye of the

law, as they were when the membership was twenty fold greater. The Society as an organization, exists in law and in fact. *Under the evidence, the findings of the Master, upon this branch of the case, undoubtedly are right.*"

D. T. WATSON,
JOHNS MCCLEAVE,
Attorneys for Respondents.

Opinion of the Court of Appeals.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE THIRD DISTRICT.

Christian Schwartz, a citizen of the State of West Virginia, Antony Koterba, David Strohaker and Allen Shale, citizens of the State of Ohio, and G. L. Shale, a citizen of South Dakota, Appellants,

vs.

John S. Duss, Gottlieb Riethmueller, Franz Gillman, Conrad Hermansdoerfer, Edward Kellerman, Johanna Hermansdoerfer, Susie G. Duss, Karoline Molt, Katrina Nagel, Elizabeth Beck, Maria Diem, Barbara Boeh, Fredericka Muntz, Dorothea Hoehr, Regina Lautenschlager. Christian Rall, Henry Hice and John Reeves, citizens of the State of Pennsylvania, and The Union Company, a corporation citizen of the State of Pennsylvania.

Appeal from the Circuit Court of the United States for the Western District of Pennsylvania.

Before Dallas and Gray, Circuit Judges, and Bradford, District Judge.

GRAY, J.

This is an appeal from the decree of the Circuit Court for the Western District of Pennsylvania. The plaintiffs below, appellents here, seek in this suit to recover a portion of the property of the Harmony Society, which they allege is defunct, and claim that its property ought to be distributed among those entitled thereto.

In the year 1803, George Rapp and his son John, and several of their friends, left the Kingdom of Wurtemberg, came to the United States, and located at a place called Harmony, in Butler County, Pennsylvania, where they were joined by a considerable number of other emigrants. They remained there until the year 1814, when they removed to Posey County, Indiana, where they remained until the year 1825, when, becoming dissatisfied, they moved back to Pennsylvania, and located at Economy, in Beaver County, Pennsylvania, where they ever since have resided. They formed a society or an association called "The Harmony Society", and in 1805 they made the first written contract between them.

The said Society was organized upon the principle of community of goods and land ownership. The members of the said Society who had brought with them from Wurtemberger money, combined their funds and held all their property in common, they lived as members of a common household, and each member enjoying alike with every other the fruits of their common labor in equality and brotherhood. The occupation or business of said Society was agriculture, except in so far as it was necessary to manufacture shoes, clothing and other necessaries for the community. The members of said Society obeyed George Rapp as their spiritual and temporal leader and ruler. The only laws or rules governing said Society were made by him, the members thereof having no voice in their enactment.

About the year 1807, the community promulgated the doctrine of celibacy, as being necessary for the success of a communistic society.

The agreement of 1805, "Exhibit A," p. 47, Vol. 1, Record, is as follows:

> "Be it hereby known to all who need to know that the following agreement has this day been made and concluded between us, the subscribers of the one part, and George Rapp and his associates of the other part:
>
> **Article 1.**
>
> "We, the subscribers, on our part, and on the part of our heirs and decendants, deliver up, renounce and remit all our estate and property consisting of cash, land and chattels, or whatever it may be, to George Rapp and his associates, in Harmony, Butler County, Pennsylvania, as a free gift or donation, for the benefit and use of the community there, and bind

ourselves, on our part, as well as on the part of our heirs and decendants, to make free renunciation thereof, and to leave the same at the disposal of the superintendents of the community as if we had never had nor possessed it.

Article 2.

"We do pledge ourselves jointly and severally to submit to the laws and regulations of the community, and to show due and ready obedience toward those who are appointed and chosen by the community as superintendents in such manner that not only we ourselves endeavor, by the labor of our hands, to promote the good and interest of the community, but also to hold our children and families to do the same.

Article 3.

"If, contrary to our expectation, the case should happen, and we jointly or severally could not stand to it in the community, and we would within a few or more years break our promise and withdraw from the community, for whatever cause it may be, never to demand any reward, either for ourselves or children, or those belonging to us, for any of our labor or services rendered, but whatever we jointly and severally shall or may do, we will have all done as a voluntary service for our brethern.

"In consideration whereof George Rapp and his associates adopt the subscribers jointly and severally as members of the community, whereby each of them obtains the privilege to be present at each religious meeting; not only they themselves, but also their children and families, shall and will receive the same necessary instructions in church and school which is needful and requisite for their temporal good and welfare as well as eternal felicity.

Article 4.

"George Rapp and his associates promise to supply the subscribers jointly and severally with all the necessaries of life, as lodging, meat, drink and clothing, etc., and not only during their healthful days, but also when one or more of them become sick or otherwise unfit for labor, they shall have and enjoy the same support and maintenance as before; and if, after a short or long period the father or mother of a family should die, or be otherwise departed from the community, and leave a family behind, they shall not be left widows or orphans, but partakers

of the same rights and maintenance as long as they live or remain in the community, as well in sick as healthful days, the same as before, or as circumstances or necessity may require,

Article 5.

"And if the case should happen as stated above, that one or more of the subscribers after a short or long period, should break their promise and could or would not submit to the laws and regulations of the church or community, and for that or any other cause would leave Harmony, George Rapp and his associates promise to refund him or them the value of his or their property brought in without interest, in one, two, or three annual installments, as the sum may be, large or small; and if one or more of them were poor and brought nothing in the community, they shall, provided they depart openly and orderly, receive a donation in money, according to his or their conduct while a member, or as he or their circumstances and necessities may require, which George Rapp and his associates shall determine at his or their departure."

"In confirmation whereof, both parties have signed their names.

"Done in Harmony, February 15, 1805."

They became the owners of about seven thousand acres of land at Harmony, Butler County, which, on May 6th, 1815, was conveyed by Frederick Rapp, as their attorney in fact, to Abraham Ziegler, for the consideration of $100,000. And in that year, or in 1814, the Society removed from Butler County, Pennsylvania, to Posey County, State of Indiana, where, in 1821, a second agreement with each other, in German, was entered into by them.

In 1825 the Society removed from Indiana to Beaver County, Pennsylvania, where they purchased and settled upon a tract of land containing about 3,000 acres, now known as "Economy," where they have since remained, and which has since become very valuable, and on which they have erected many buildings, including dwellings and factories of various kinds, and made many valuable improvements.

After the settlement at Economy, in 1827, another agreement was entered into and signed by all the then members of the association. This agreement is substantially the same as the agreement of 1805, in so far as it relates to the rights and duties of the mem-

ers of the Society. It had, however, in it a stipulation, constitut-ıg the sixth article, that the Society would refund to any members ho, for any reason should withdraw therefrom, "the value of all ıch property as he or they may have brought into the community, ı compliance with the first article of this agreement." And if the ersons withdrawing were poor, and brought nothing into the com-ıunity, they should, nevertheless, receive a donation of money ac-ording to the length of their stay, and to their conduct and neces-ities, in the judgment of the superintendent of the association. n 1836, owing to troubles occasioned by a secession of members, was deemed wise to abrogate this article, and accordingly an greement supplementary to that of 1827 was entered into by all f the then members of the community in which "the principle f restriction of property" was, for reasons stated, renounced, and ıe said sixth article of the agreement of 1827 was expressly and ıtirely "annulled and made void as if it had never existed," all ther articles remaining "in full force as heretofore." This supple-ıentary agreement then provided as follows:

"2nd. All the property of the Society, real, personal and mixed, in law or equity, and howsoever, contributed or acquired shall be deemed, now and forever joint and indivisible stock. Each individual is to be considered to have finally and irrevocably parted with all his former contributions, whether in land, goods, money or labor; and the same rule shall apply to all future contributions whatever they may be.

"3rd. Should any individal withdraw from the society, or depart this life, neither he, in the one case nor his representatives in the other, shall be entitled to demand an account of said contributions, whether in land, goods, money or labor, or to claim anything from the society as matter of right. But it shall be left altogether to the discretion of the superintendent, to decide whether any, and if any, what allowance shall be made to such member, or his representatives as a donation."

After the death of George Rapp, in 1847, and in that year, other agreement was entered into by the then members of the so-ıty, confirming the agreements of 1827 and 1836, except so far as e same were affected by the death of the said George Rapp, and oviding for a different scheme of administration. The executive

powers which had theretofore been mainly exercised by the said Rapp, were vested in a Board of nine Elders, to be chosen as therein provided.

The agreements of 1827, 1836 and 1847, are those under which, or some of which, the plaintiffs claim the right to share in the property and assets of the society, as heirs of former members. The bill alleges that the complainants were heirs and next of kin of those who either were members of the society and withdrew from the same before the execution of the agreement of 1836, or of those dying in the society before that time, or of those who died members of the society after having joined in the agreements of 1834 and 1847.

The bill alleges that the defendant, John Duss, with others entered into a conspiracy, on more than one occcsion, to wreck the society and take to himself and his co-conspirators the property and assets of the same. The bill further alleges that there had been, prior to and up to the time of filing of the bill, such an abandonment by the defendants, constituting the present membership of the society, of the principles and purposes upon which the said society was founded, as to work a dissolution of the same. The complainants, therefore, contend that, such being the case, the present property of said society reverts to the complainants and such others as were heirs at law and next of kin of those who contributed and gave to the said society its property.

To support the charge of abandonment of the purposes of the society, various specific allegations are made concerning the alleged immorality of John Duss and others of the defendants, of the intemperance alleged to prevail among them, and the alleged renunciation of the religious principles generally, upon which the society was founded.

In view of the findings of the Master, hereinafter referred to, it is unnecessary to consider these allegations in detail.

After the cause was at issue, upon the agreement and request of the parties, the Court below appointed W. W. Thompson, Esquire, as Examiner and Master, with authority to hear and take all the testimony, and find all the issues of fact and law, and to report the testimony and such findings to the court. In pursuance of this appointment, a great amount of testimony was adduced by the parties and taken by the Examiner, who returned the same to the Court below, together with a long and most elaborate report, embodying

his findings, as Master, of the facts and conclusions of law arising thereon. To these findings of the Master, exceptions were duly taken and filed, and argued before the court below. That court, after hearing the case upon the pleadings and evidence, the Master's report and the exceptions thereto, made a decree, dismissing the complainants' bill. From this decree an appeal has been taken to this court, and numerous exceptions have been filed. But it is only necessary to consider the underlying questions. These are succinctly and correctly stated by the Master, in his report, as follows:

"First. Have the plaintiffs, or any of them, such proprietary right or interest in the property and assets of the Harmony Society as entitled them, upon the dissolution of the society, to any part of, or share in, such property or assets or as entitled them to the account prayed for in the bill?

"Second. Has the Harmony Society been dissolved by the common consent of the members or by an abandonment of the purpoes for which it was formed?"

"These obviously fundamental and determining questions have been most ably discussed by the Master in the light of the testimony and documentary evidence, all of which, together with the Master's report, are contained in the Record before this court.

"The findings of fact by the Master bearing on the first of these questions, were as follows:

"1st. That none of the plaintiffs were ever members of the society.

"2d. That all of those members of the society through whom Christian Schwartz claims as their heirs, signed the agreements of 1836 and 1847, and continued members until their death.

"3d. That Anthony Koterba claims as heir of his father, Joseph Koterba, and his half-brother, Andreas Koterba, and that Joseph Koterba joined in the organization of the society, and also signed the agreement of 1827, and afterwards, in 1827, withdrew from the society; and that Andreas Koterba signed the agreements of 1827, 1836 and 1847, and died a member of the society.

4th. That the grandparents of David Strohaker, viz,, Christian Strohaker and wife, and Matthias Rief and wife,

joined the society in 1805, and all remained members until their death—all dying between 1820 and 1825, except Mrs Rief, who died between 1830 and 1836. That his father, Christian Strohaker signed the agreement of 1827, and withdrew from the society in 1827. That his aunt, Catharina Strohaker, signed the agreement of 1827, 1836 and 1847, and continued a member of the society until her death.

5th. That Lawrence Scheel and Jacob Scheel, ancestors of Allen and G. L. Shale, joined the society in 1805; that Lawrence withdrew in 1824, or 1826; that Jacob Scheel signed the agreement of 1827, and died a member, about 1837.

6th. That none of the parties, through whom the plaintiffs claim, contributed any money or property to the society."

"As a conclusion of law upon the facts thus found, the Master reports: "The plaintiffs, therefore, under their agreements have no claims on the property of the society through any of their ancestors. Not through those who withdrew before the execution of the agreement of October 31st, 1836, because those who withdrew had had returned to them the value of any property they might have contributed, and had received compensation for their interest or part in the society or its property. Not through those who died in the society before 1836, because all their interest in the property had become vested in the society, and did not descend to their heirs. And not through those who died in, or withdrew from, the society after the agreement of 1836, because they had by that agreement expressly renounced for themselves and their heirs all right to claim anything on their withdrawal or death. In all the cases cited above the principle of survivorship in the remaining or surviving members was recognized as existing, and approved and enforced."

As a mixed finding of fact and of law, the Master, for reasons set out at great length in his report, answers the second question above stated, as follows: "That there has been no abandonment of the purposes for which the Harmony Society was founded, and that the said Society has not been dissolved by reason of any such abandonment, and that the plaintiffs are not entitled to the relief prayed for in the Bill". The report ends with a recommendation by the Master, that the Bill of Complainants be dismissed, with costs.

Where the Court, with the consent and by the agreement of parties, appoints a Master, and confers upon him "authority to hear and take all the testimony, and find all the issues of law and fact", as in this case, in so far as the report of the Master, and the Opinion of the Court find facts, such findings are considered as conclusive in this Court, unless plain error be unmistakably shown, from the great preponderence of evidence in the case.

Met. Bank vs, Rogers, 53 Fed. Rep. 776.
Kimberley vs. Arms, 129 U. S. 525.
Dravo vs. Fahill, 132 U. S. 487.

The findings of facts made by the Master were confirmed by the Court below. The learned Judge of that Court, in his opinion, states that he read all the testimony in the case, in order to come to an independent conclusion, and that the conclusion so arrived at agreed entirely with that reported by the Master. Such finding by the Master and by the Court, unless found by this Court to be unmistakably and plainly erroneous, will be binding here, and will determine this case adversely to the complainants, and make unnecessary any examination of the questions of law that might have been involved upon different finding of fact. A careful examination of the testimony and evidence contained in the record before us, not only fails to make manifest any such plain and unmistakable error in these findings, but convinces this Court that they were in all respects justified.

The learned Judge of the Court below has so completely covered all the questions of law and fact arising in this case, and necessary to its determination, that we feel constrained to adopt as our own, his opinion, as we find the same in the record, part of which we hear repeat as follows:

"The plaintiffs sue as heirs of certain persons who were formerly members of the Harmony Society and who continued to be members until their voluntary withdrawal or death. The bill is against all the persons who composed the Society at the commencement of the suit, namely, June 27th, 1894, the membership then embracing sixteen persons. The bill joins as co-defendants with the members of the Harmony Society, Henry Hice, John Reeves and the Union Company, a corporation, the bill charging that these three defendants and the defendant John S. Duss, a member of the Society and the senior Trustee thereof, were acting together in a conspiracy to wreck and

dismember the Society and appropriate to themselves the entire assets of the Society. The bill further alleges that all the purposes for which the Society was founded and its established practices had been abandoned, and that by common consent the Society had ceased to exist as an association and had been dissolved, and that 'the assets of such dissolved association have reverted to the donors thereof, among whom were the ancestors and intestates of the plaintiffs. The bill prays for the appointment of a Receiver and for the division and distribution of the assets of the Society amongst the persons legally entitled thereto, including the plaintiffs. All the defendants have answered the bill. In their answers they all deny the above recited charges and allegations and all the averments in the bill upon which the plaintiffs' supposed right to relief rests; and they also deny that the plaintiffs have any interest whatever in the property of the Harmony Society or any right to intermeddle with its affairs. * * * * * * * * * * * * * * In conformity with the agreement of the parties and pursuant to the order appointing him, the Master took a large amount of testimony and made findings which are embodied in a written report to the Court. The Master filed with his report the testimony and exceptions taken by the plaintiffs to his findings.

"The cause has been heard upon the pleadings and evidence, the Master's report and the exceptions thereto.

"The report of the Master is altogether adverse to the plaintiffs. He finds that the charges of conspiracy and misconduct and the allegations of abandonment of the purposes and established practices of the Harmony Society and of the dissolution of the Society, contained in the bill, are not sustained by the evidence, and that they are not true. Upon every material question of fact, the finding of the Master is distinctly in favor of the defendants, and he recommends the dismissal of the bill.

"The Master's report covers the entire case and evidences the most careful consideration of every question here raised. Nevertheless, the Court has felt it to be its duty to make an independent investigation of the facts and merits of the case: and therefore we have attentively read and considered the whole of the evidence. Avoiding, as needless, a particular

discussion of the numerous exceptions to the Master's report, we will briefly state our general views and conclusions:

"The constitution of the Harmony Society is embodied and the general purposes of the association are set forth in a series of written agreements executed in the years 1805, 1821, 1827, 1836, 1847 and 1890. These agreements were signed at their respective dates by all the then members of the Society. By the agreement of 1805 the doctrine of community of property became, and by the subsequent agreements continues to be, a fundamental principle of the Society. Its acceptance is an essential condition of membership. By the constitution of the Society, individual ownership of property is renounced in favor of the community, or Society. The members have all things in common, and each is entitled to receive from the Society necessary maintenance, support and education, and in return, each is bound to render to the Society labor and obedience. The agreement of 1827 contained a provision that if any member withdrew from the Society there should be refunded to him the value, without interest, of all the property he had brought into the community. The agreement of 1836, however, rescinded that provision wholly, and stipulated that if any individual shall withdraw from the Society, or depart this life, neither he, in the one case, nor his representatives in the other, shall be entitled to demand an account of his contributions, whether in lands, goods, money or labor, or to claim anything from the Society as a matter of right; but that it shall be left altogether to the discretion of the Superintendent to decide whether any, and if any, what allowance shall be made to such member, or his representatives, as a donation.

"In view of the decision of the Supreme Court of Pennsylvania, in *Schriber vs. Rapp*, 5 Watts, 351, and the decisions of the Supreme Court of the United States in *Goesele et. al. vs. Bimeler et al.*, 14 How., 589, and *Baker et al. vs. Nachtrieb*, 19 How., 126, it is clear that the above recited articles of agreement are valid contracts, and that thereunder, upon the death of a member of the society in fellowship, no claim enforceable against the Society or its property passes to his heirs or personal representatives, and that since 1836 no member voluntarily withdrawing from the Society could acquire any such claim.

"Now, not one of the plaintiffs was ever a member of the Harmony Society. Furthermore, it does not appear that any of the persons through whom the plaintiffs claim, contributed any money or property to the Society. The Master has found that no such contribution was ever made by any of those persons. The correctness of that finding has not been impeached. All the members through whom the plaintiffs claim who left the Society, withdrew in or before the year 1827. Presumably they retired upon terms satisfactory to themselves. If, however, those persons so withdrawing had any legal demands against the Society, those demands have been barred by lapse of time. *Spiedel vs. Henrici*, 120 U. S. 377. The other persons through whom the plaintiffs claim remained with the Society and died in fellowship. They had received and enjoyed all the benefits secured to them by the recited articles of agreement, and therefore, no rights enforceable against the Society passed from them to their heirs or personal representatives.

"The soundness of the view that the deceased ancestors and the collateral relatives of the plaintiffs could transmit to them no rights enforceable against the Harmony Society as a living organization, is impliedly conceded by the bill, for it alleges that the Society had come to an end. The bill proceeds upon the theory that a dissolution of the Society had been brought about. Upon this assumption, and under the allegation 'that recently said Harmony Society has become dissolved as aforesaid'; the bill prays that the Court take charge of the assets of the Society and distribute the same amongst the parties legally and equitably entitled thereto.

"But the hypothesis of dissolution is not well founded. The proofs show that the Society is in full life. There has been no dissolution of the Society, either by the common consent of the members or by their acts. The membership, indeed, has become greatly reduced, but the rights of the Society, as now constituted, are as sacred in the eye of the law as they were when the membership was twenty fold greater. The Society as an organization exists in law and in fact. Under the evidence, the findings of the Master, upon this branch of the case, undoubtedly are right. Hence, the very foundation of the bill fails. The plaintiffs do not show that they are entitled to any equitable relief whatever.

"It is not necessary, nor would it be proper, for the Court to express any opinion as to what would be the legal status and the ultimate disposition of the property of the Harmony Society, were its existence terminated by the death of all its members, or were a dissolution of the Society otherwise effected. No such questions are before us. We are not dealing with the assets of a defunct or dissolved association.

"In respect to the alleged conspiracy to wreck and dismember the Harmony Society, we feel called upon to say that we fully agree with the conclusion of the Master. The acts here principally complained of, we think, designed, not to destroy the Society, but to save it from the consequences of business mistakes made by none of the present officers or members of the Society, and for which none of them are at all responsible. The measures resorted to in the emergency which was upon the Society were successful in extricating it from great financial peril. Those measures were adopted and carried out under the advice of eminent counsel, whose rectitude of purpose the Court cannot doubt.

"And now before closing, we deem it to be our duty to declare, that after the most careful scrutiny of the evidence, it is our judgment that the charge of immorality made against John S. Duss, the senior Trustee, in the twenty-fourth paragraph of the bill, are not sustained by the evidence, but are disproved.

"The general rule in Equity that costs follow the decree, we think, should be applied here, under the circumstances. *Swetzel vs. Penn Bank*,, 147 Pa., 140, 154. The bill alleges conspiracy, fraud and immorality, and those grave charges have not been withdrawn. Having justly vindicated themselves from these charges, the defendants are justly entitled to full costs."

The decree of the Court below, dismissing the bill, is affirmed.

38

JAN 28 1901
JAMES H. McKENNEY,
Clerk.

IN THE

United States Circuit Court of Appeals,

THIRD CIRCUIT,

No. , MARCH TERM, 1900.

CHRISTIAN SCHWARTZ, a citizen of the State of West Virginia, ANTONY KOTERBA, DAVID STROHAKER and ALLEN SHALE, citizens of the State of Ohio, and G. L. SHALE, a citizen of South Dakota,

vs.

JOHN S. DUSS, GOTTLIEB RIETHMUELLER, FRANZ GILLMAN, CONRAD HERMANSDOERFER, EDWARD KELLERMAN, JOHANNA HERMANSDOERFER, SUSIE C. DUSS, KAROLINE MOLT, KATRINA NAGEL, ELIZABETH BECK, MARIA DIEM, BARBARA BOEH, FREDERICKA MUNTZ, DOROTHEA HOEHR, REGINA LAUTENSCHLAGER, CHRISTIAN RALL, HENRY HICE and JOHN REEVES, citizens of the State of Pennsylvania, and THE UNION COMPANY, a corporation, citizen of the State of Pennsylvania.

BRIEF OF THE APPELLEES.

CHARLES S. FETTERMAN,
JOHNS McCLEAVE,
D. T. WATSON,
Solicitors for Appellees.

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IN THE

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No. , MARCH TERM, 1900.

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vs.

JOHN S. DUSS, GOTTLIEB RIETHMUELLER, FRANZ GILLMAN, CONRAD HERMANSDOERFER, EDWARD KELLERMAN, JOHANNA HERMANSDOERFER, SUSIE C. DUSS, KAROLINE MOLT, KATRINA NAGEL, ELIZABETH BECK, MARIA DIEM, BARBARA BOEH, FREDERICKA MUNTZ, DOROTHEA HOEHR, REGINA LAUTENSCHLAGER, CHRISTIAN RALL, HENRY HICE and JOHN REEVES, citizens of the State of Pennsylvania, and THE UNION COMPANY, a corporation, citizen of the State of Pennsylvania.

ERRATA.

"Record, vol. IV," in references to pages of testimony should be read "Record, vol. III."

STATEMENT OF THE CASE.

The plaintiffs below, appellants here, seek, in this suit, to recover a portion of the property of the Harmony Society. They claim this, *not* because of any direct property interest either pretends to have, nor because either was a member of said society, but because, as they allege, their ancestors, in

more or less remote degrees of consanguinity or affinity, at some period long past, *were* members, and *either* left the society or died while still members, and because, as appellants now claim, the society is dissolved and has been abandoned, and hence they argue, in the general distribution of its property, we are each, on account of our ancestors, entitled to a share.

Thus, two main questions arise:

(1) Is either one of the appellants a part owner in the property of the Harmony Society and entitled to any interest therein even if the society was dissolved?

(2) Has the Harmony Society been dissolved?

In the master's report and the opinion of the court below each of these questions was taken up and discussed as a mixed question of fact and law, and the facts and the law on each were found against the appellants and in favor of the appellees.

The master found all of the material questions in the case against the appellants, and the court below approved, after full argument, of these findings.

To the master's conclusions and findings, the appellants filed in the Circuit Court fifty-one (51) exceptions. The court overruled all of them and entered a decree dismissing the bill, from which the appellants appealed, and filed forty-eight (48) assignments of error.

We believe this court will find it more convenient, and we will be the better able to present our views with simplicity and directness if we take up each question separately and fol-

low the master and court below in that direction, instead of taking up seriatim the assignments of error filed by appellants. We can thus more speedily present our case and assure the court of a plain statement of what we claim both as to facts and law connectedly on each question, and, at the same time, answer all said assignments of error.

BRIEF SKETCH OF THE HARMONY SOCIETY.

In 1804 and 1805, George Rapp and certain of his followers left the kingdom of Wurtemberg and came to the United States. They settled first in Harmony, Butler County, Pennsylvania, then moved to Wabash, Indiana, and came to Economy, in Beaver County, Pennsylvania, in the year 1825.

In the year 1805 they organized the Harmony Society by a written agreement bearing that date, which is in evidence. This written agreement was followed by another agreement made by the society in 1827; by another one in 1836; by another one in 1847; and by subsequent ones in 1890 and 1892; and in addition there was another written agreement in 1821. All of these agreements, except that of 1821, are in evidence, and are analyzed in a subsequent part of this brief.

Prior to 1847, the property of the society and its external business was in the hands of a general agent. Frederick Rapp, up until his death, held that position, and at his death, in 1834, George Rapp was appointed to take his place. The society did carry on agricultural pursuits, but, at the same time, largely engaged in many other enterprises, such as saw mills, distilleries, glass plants, etc., etc.

In 1827, the written agreement stated that the society was based on Christian fellowship, and that that fellowship included the patriarchal government and the community of goods adopted in the days of the Apostles, and also stated that the sole aim of the society was to approximate to the fulfillment of the will of God by the practice and observance of those affections and virtues which are essential to man's happiness here and hereafter.

From 1825 the possessions of the society increased largely, but in 1832 what was known as the Count De Leon conspiracy took place, which resulted in a division of the society and a distribution of a part of its assets. The agreement showing this division and distribution is dated March 6, 1832, is in evidence as Exhibit No. 82, on pp. 606, *et seg.*, Record, vol. IV., and is signed by all those then comprising the Harmony Society.

From 1832 down until 1890, the *bill* in this case avers that peace and prosperity attended the society.

That there was this long period of prosperity during which the society

> "had rigidly adhered to its plan of government"

and had become

> "illustrious and highly respected."

That it had advocated the equality of man; had espoused the highest principals of Christianity; that its administration had been honest and benevolent, and this, whether in its internal affairs or in

> "its many transactions with the citizens of Western Pennsylvania."

ALLEGATION OF PLAINTIFFS' BILL.

The bill then alleges that, in 1890, certain schemes were set on foot to wreck the society, and states those schemes to have been as follows:

(1) John S. Duss and others conspired to introduce Cyrus Teed and others into the Harmony Society, for the purpose of controlling the society, the result of which has overthrown and destroyed the government of the society, wasted its wealth, depleted its numbers, and placed the management of the society in his own hands. That prior to his joining the society, Duss was the friend and confederate of Cyrus Teed.

Yet the bill admits that this conspiracy was overthfown by the protestations of a number of members of the Harmony Society, and that after a failure of this conspiracy Duss abandoned it, but began a new conspiracy.

See paragraphs 10, 11, 12, of the bill.

(2) The new conspiracy is stated in paragraphs 14, 15, 16, 17, 18, 19, of the bill, and the purpose of it was to wreck and dismember the society, and attain for himself and confederates the entire assets of the society.

A step in this conspiracy was an agreement with Judge Hice and Reeves to use the money of the Harmony Society to pay the debts of the Economy Savings Bank; the borrowing of $400,000, and giving of the Darlington Mortgage on all the real estate of the Harmony Society to secure its payment; the

borrowing of $100,000, secured by a second mortgage on the same property; the sale of valuable dividend paying stocks in bridge companies, water companies, railroad companies, and other valuable corporations, by artifice and fraud securing most of the members to withdraw; and, paragraph 21st, by threats and intimidation inducing others to do so.

Paragraph 20 alleges the sale to the Union Company of the Economy land, but whether as part of this general conspiracy is not stated.

Paragraph 22d alleges that Duss is selling liquor without license, and 23d, that the principle of equality in the Harmony Society is no longer recognized or maintained. The 24th contains the charges as to Fredericka Kroll.

DISSOLUTION OF SOCIETY.

The averments in the bill as to the dissolution of the Harmony Society:

Paragraph 3rd, the words are:

> "which has become dissolved as hereinafter stated."

Paragraph 25th:

> "That recently said Harmony Society has become dissolved as aforesaid, that all of its purposes and practices established as aforesaid by the founders of

said society, and by the ancestors of your orator, have been abandoned, * * * and that by reason of the facts hereinbefore set forth, your orators and the said last members, except the said Duss and wife, are now tenants in common of all said lands and tenements, and entitled to partition thereof in proportion to their respective interests."

Paragraph 26th:

"* * * that by common consent this association has ceased to exist as an association, and that if the property thereof has ever been impressed with a trust, (which your orators deny as being contrary to public policy, and void in law and equity), such trust has wholly ceased, and the assets of such dissolved association have reverted to the donors thereof, among whom were the ancestors and intestates of your orators, as hereinbefore fully set forth."

THE PRAYERS OF THE BILL ARE AS FOLLOWS:

(1) A receiver;

(2) Injunction to prevent the selling of property;

(3) Discovery of the accounts, liabilities, debts and assets;

(4) That the Union Company be restrained from disposing of any portion of the property conveyed to it by the trustees;

(5) That the deed by the trustees to the Union Company be declared fraudulent and void, and surrendered up to be cancelled;

(6) That an account be stated against Duss for the losses that have been sustained through his fraud and mismanagement;

(7) The marshalling of the assets, and a winding up of the affairs of the Harmony Society, and a division and dis-

tribution of the assets, real and personal, either by sale or partition, to and among the parties legally and equitably entitled thereto, including the plaintiffs, and that each may receive his share in severalty;

(8) Other relief;

(9) Subpœna.

ISSUES RAISED.

The answer, in all material points, flatly contradicted the averments of the bill. It denied all manner of fraud and improper conduct of any kind; it denied all charges of conspiracy; denied that any one of the plaintiffs had any interest in the property of the company, and averred that the society was not dissolved, but in full life and vigor.

It is clear that in order to entitle the plaintiffs to a decree for an account as prayed for in the bill they must prove :

(1) That the plaintiffs owned in part, or had property rights in, the real and personal estate of the Harmony Society as it at present exists, or did exist when the bill was filed, and has the present right of possession to a share of the said property.

(2) That the Harmony Society has been dissolved;

(*a*) By common consent of its members; or,

(*b*) By the abandonment of the purposes for which it was founded.

MASTER AND COURT BELOW.

The court below, upon request, and upon the written agreement of counsel on both sides, appointed a master to take testimony, find the facts, and report the same, and his opinion on the law of the case to the court, giving to either side the right to except thereto.

The master took 2,907 pages of testimony (type-written), and there were in the case 96 exhibits.

After an elaborate argument, in which each side was allowed days to discuss their respective views of the case, and after the master had elaborately considered all of the testimony, he filed a written report, in which he found all the material facts and all the material questions of law against the plaintiffs, and recommended that the bill be dismissed.

To this report the appellants filed in court fifty-one (51) exceptions, and, again, after a most liberal allowance of time for the oral discussion of the same, the court below (Judge Acheson) overruled all of the exceptions, approved all of the findings of the master, and made a decree dismissing the bill.

We, especially, ask the attention of this court to the findings of fact and the opinion of the master.

Every question in the case, great or small, was most carefully and elaborately examined. The report is well written,

carefully considered, contains a full citation of authorities, and indeed is a remarkable document.

The court below (Judge Acheson) regarded it as his duty to read, and he did read, all the evidence in the case, and his opinion discussed quite fully the salient points. He confirmed the master in every respect, and to his opinion, also, we respectfully refer.

EFFECT OF THE FINDING OF FACTS BY THE MASTER AND COURT BELOW.

In so far as the report of the master and the opinion of the court find facts they are considered as conclusive in this court unless plain error be unmistakably shown from the great preponderance of evidence in the case.

Metropolitan Bank vs. Rogers, 53 *Federal Rptr.*, 776.
Kimberly vs. Armes, 129 *U. S.*, 525.
Dravo vs. Fahil, 132 *U. S.*, 487.

THE FIRST QUESTION.

The assignments of error, although forty-eight (48) in number, can the more readily be grouped as raising but the two questions hereinbefore stated:

(1) The property interest of the appellants.

(2) The dissolution of the Harmony Society.

We take up, then, the first question, which we state as follows:

(1) IS EITHER ONE OF THE PLAINTIFFS A PART OWNER IN THE PROPERTY, REAL OR PERSONAL, OF THE HARMONY SOCIETY, AND IF THE SOCIETY WAS NOW DISSOLVED WOULD EITHER BE DECREED A PART THEREOF?

The answer specifically asserts that no one of them is a part owner, and that even if the society was dissolved no one of the appellants could participate in the dissolution of its property. (See paragraphs six [6] and twenty-eight [28] of the answer.)

(*a*) No one of the plaintiffs seriously alleges that he is a member of the Harmony Society, or that he ever was a member. The master and court below found that no one of them ever was a member. The appellants did not below, nor do they here, specifically assign error to such finding. For the convenience, however, of this court, if it desires to examine the question, we refer, briefly, to the testimony.

Christian Schwartz did testify (pages 2427 and 2428 of type-written testimony) that he had intended to join the society on February 15, 1845, the Feast Day, but was unable to be present. That Father Rapp sent him in the night the Lord's Supper, which was given only to members, and that Father Rapp treated him as a member.

In the first place this testimony is in flat contradiction of this same witness when he was originally called as a witness. He then testified (Record, vol. II., p. 406):

"Q. Did you ever join the Harmony Society?
"A. *No, sir; I never became a member.*
"Q. You left Economy in 1846?
"A. Yes, sir."

The testimony is insufficient to prove membership. The evidence all agrees that no person could join the society without first signing the Constitution.

Fredericka Muntz, pages 1399, 2803, 2805 of type-written testimony; Record, vol. IV., p. 385.

John S. Duss, page 2482 of type-written testimony.

The allegation that Father Rapp treated him as a member proves nothing as to membership, because Father Rapp did not have the power, by his merely treating a person as a member, to thereby create or make him such.

If he had such power, where is the proof of it?

Fredericka Muntz, who then was a member of the Harmony Society, testifies (page 2803 of type-written testimony; Record, vol. IV., p. 385) that Schwartz was not a member, nor was he treated as such.

In the bill the plaintiffs do not allege that Christian Schwartz was a member of the Harmony Society, but do allege (paragraph 3), that he went into the society in 1823, when three years old, and this, Schwartz explained in his testimony, was when his father and mother moved to Economy. Schwartz does not pretend *this* made him a member of the society, but his receiving the sacrament when he became of age in 1845.

(*B*) Each one of the plaintiffs claim a proprietary right or ownership in manner as follows:

(1) *Christian Schwartz.*

He claims through—

(*a*) His father, Christolf, and his mother, Barbara, who joined the Harmony Society, he thinks, in 1826 or 1827. The father died at Economy, still a member, in 1858; and his mother at Economy, still a member, in 1857.

They signed the agreement of 1827, Ex. No. 18, page 35.

The agreement of 1836, Ex. 18, page 49.

The agreement of 1847, Ex. 18, page 90.

See evidence of Christian Schwartz, Record, vol. II., pp. 824, 825, 826, 827.

See also, offers and admissions of plaintiffs, Record, vol. II., pp. 601, 602.

It is presumed that Exhibit 18 proves itself, and this evidence of signatures was unnecessary.

(*b*) His four sisters, as follows:

Katrina Schwartz: The date of her admission into the Harmony Society is not shown, but she died at Economy in 1888, (Record, vol. III., p. 827)

She signed the agreement of 1836, Ex. 18, page 65.

She signed the agreement of 1847, Ex. 18, page 97.

Fredericka Schwartz: The date of her admission is not shown, but she died at Economy in 1857. Record, vol.III., pp. 827 and 828.

She signed the agreement of 1836, Ex. 18, page 65.

She signed the agreement of 1847, Ex. 18, page 97.

Marie Schwartz: The date of her admission is not shown, but she died at Economy in 1878. Record, vol.III., p. 828.

She signed the agreement of 1836, Ex. 18, page 65.

She signed the agreement of 1847, Ex. 18, page 97.

Louisa Schwartz: The date of her admission is not shown, but she died at Economy in 1888. Record, vol.III., p. 829.

She signed the agreement of 1836, Ex. 18, page 97.

She signed the agreement of 1847, Ex. 18, page 97.

(*c*) His brother,

Joseph Schwartz: The date of his admission is not shown, but he died in 1889 at Economy. Record, vol. III., p. 829.

He signed the agreement of 1836, Ex. 18, page 73.

He signed the agreement of 1847, Ex. 18, page 91.

See on *sisters and brothers following evidence:*

Christian Schwartz, Record, vol. III., pp. 824–831.

Exhibit 18, different pages.

Offer of plaintiffs, page 601, *et seq.*

Joel Schwartz: He never was a member.

See—Fredericka Muntz,

Christian Schwartz.

He did not sign any of the agreements.

(2) *Anthony Koterba:*

He claims through—

(*a*) His father, *Joseph Koterba:* Joseph joined the society, it would seem, some time prior to 1827, and withdrew therefrom on November 13th, 1827, married and had children, and died in the State of Ohio in 1860 (Record, vol. IV., p. 403). He left a will, and issue—three sons and one daughter. Record, vol. IV., pp. 403 and 404.

Joseph signed the agreement of 1827 (page 1031.)

(*b*) *Andreas Koterba:* Does not show when he joined the society, but he died May 25th, 1880, at Economy (page 1032 of type-written testimony, and Record, vol. IV., p. 404).

Andeas signed the agreement of 1827, Ex. 18, page 38.

He signed the agreement of 1836, Ex. 18, page 53.

He signed the agreement of 1847, Ex. 18, page 89.

See testimony as to foregoing:

Anthony Koterba, pages 1031 *et al.* of type-written testimony, and Record, vol. IV., p. 402 *et al.*

See also, admission of plaintiffs and defendant on page 1031 of type-written testimony.

Also, offer of plaintiffs on page 600 *et seq.* of Record, vol. IV.

---

(3) *David Strohaker:*

He claims through:

(*a*) Christian Strohaker: His paternal grandfather, who died in Wabash, Indiana, between 1820 and 1825 (p. 2321 of type-written testimony).

There is no evidence that he ever joined the society, unless it be the signature to the agreement of 1805 (page 17).

See also signatures to agreement of 1827, Ex. 18.

(*b*) ——— *Strohaker:* His paternal grandmother, who died in Wabash, Indiana, between 1820 and 1824 (pp. 2321-2322 of type-written testimony).

There is no evidence to show that she ever joined the society, nor does her name appear to any of the agreements.

(*c*) *Matthias Reif:* He was the maternal grandfather, and died in Wabash, Indiana, between 1820 and 1824 (p. 2322 of type-written testimony).

There is no evidence to show that he ever joined the society, unless it be the signature to the agreement of 1805, (see page 7.)

(*d*) *Agnes Reif:* She was his maternal grandmother, who died in Economy (he thinks), in 1832, or 1833, or 1834. (Page 2322 of type-written testimony).

There is no evidence to show that she ever joined the society, nor did she sign any of the agreements.

(*e*) *Christopher Strohaker* and *Marie Reif Strohaker:* The father and mother of David Strohaker. Christopher died in 1867, and Marie died in 1875. David Strohaker, when testifying, said that they went in with their parents in 1805, (page 2325 of type-written testimony); that his father and mother left Economy in 1827, (page 2325); that they were children in 1805, and joined when of age, (page 2326 of type-written testimony); they left in 1827, (page 2327 of type-written testimony).

It seems that they signed the agreement of 1827.

See plaintiffs' offer, Record, vol. IV., p. 600, and Ex. 18.

See also, the agreement of 1805, page 170, as to signature of Christopher Strohaker.

(*f*) *Catharine Strohaker:* She died in Economy in 1865, and was the aunt of David Strohaker, the claimant.

She signed the agreement of 1836, Ex. 18, page 58.

She also signed the agreement of 1847, Ex. 18, page 96.

On page 600 of Record, vol. IV., the plaintiffs offer the agreements of 1827 and 1836, and admit that she signed them, but did not specify the agreement of 1847.

See also the testimony of David Strohaker; pages 1037 *et seq.* and 2320 *et seq.* of type-written testimony.

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(4) *Allan Shale and G. L. Shale:*

They claim through:

(*a*) Their great-grandmother, *Mary Shale*, who died at Harmony, in Butler county, Pennsylvania,

and while the society was in Indiana, and therefore must have been prior to 1824, (p. 2338 of type-written testimony.)

It does not appear that Mary Shale ever signed any of the agreements of the society, nor is there any evidence to show that she ever was a member.

(*b*) Their grandfather, *Lawrence Shale*, who died in 1855. When he joined does not appear, but he seems to have signed the agreement of 1805, and he left the society between 1824 and 1826, and married (page 2339 of type-written testimony).

G. L. Shale is the son of Lawrence Shale (page 2342).

(*c*) *Jacob Shale*, who was the great uncle of the plaintiffs. He died in Economy in the year 1837 (page 2341 of type-written testimony).

He signed the agreement of 1827, Ex. 18, page 13.

See testimony of Allen Shale, page 1047, *et seq.*, and page 2343, *et seq.*, type-written testimony.

When the bill in equity was filed no one of the plaintiffs was or ever had been a member of the society, or in any way

represented the interest of any member of the society. Their only claim was that, respectively, they were heirs at law or next of kin of some deceased member.

CONTRIBUTIONS OF PROPERTY.

No one of the appellants and no one of all their ancestors ever contributed any property whatever to the Harmony Society. Nothing whatever was thus contributed.

The Master has so found, and, after argument, the court below so found.

It is in entire accord with all the evidence.

There is no proof that any of the deceased members, under whom plaintiffs claim, ever contributed any property to the society. The only item of evidence on this is hearsay. It was given by Strohaker. See pages 1041, 1043; *et seq.*, typewritten testimony.

A personal individual right cannot be proved by repute, or pedigree, or hearsay.

Wharton on Evidence, secs. 186, 190, 201, *et seq.*

Even if that evidence was admissable, yet it contained no admission by any one then having the power to bind the society, that any money had been paid by the Strohaker ancestor to the society.

The witness' story is that two men—Witzenman and Baker—called in 1837 or 1838 to collect a note for $300.00, which witness' father had given to the society. The father actually paid the money, and then the witness goes on to say (page 1056, type-written testimony,) mother cried and said,

> "she had to pay for her own money that they had put in there in 1805, from their father's estate. That she had to pay interest on her own money."
>
> "Q. What did Baker say?
> "A. He said, 'If I could change it I would, but I haven't got the power.' I heard him say that."

Mrs. Strohaker was a child in 1805 when it is said her father joined.

This does not prove that then Mrs. Strohaker had put money into the society in 1805. There is no proof that either Baker or Witzenman were then the agents of the society, having power which would make their admission evidence against it

They did not admit anything.

The question of whether any given person joined, or was a a member of, the Harmony Society, or contributed money to it, is not one of pedigree or of reputation, and therefore the traditions or declarations concerning it are not evidence to prove that as a fact it was true.

Wharton's Evidence, secs. 186, 201, *et seq.*

Mima Queen and child vs. Hepburn, 7 *Cranch*, 290.

PLAINTIFFS HAVE NO OTHER RIGHTS THAN AS THE DESCENDENTS OF NON-CONTRIBUTING ANCESTORS.

(II.) It seems perfectly obvious that no one of, or all of, these plaintiffs together can have a higher or greater (even if an equal, which we deny,) right to the property of the society than the respective ancestors through whom they claim.

(*a*) What, then, were the property rights of those ancestors?

(*b*) Did they survive a withdrawal from the society?

(*c*) Did they, on death, pass by descent to the heirs or next of kin, or to the personal representative of the decedent?

All of these questions may the more readily be considered together.

All depend upon the written contracts of the parties.

There is no other testimony of any kind in any way proving how, or upon what terms, or in what manner, the property of the society is held, and what the rights or interests in that property of the members of the Harmony Society are, except the written contracts, commonly called the constitution.

Before any one could join the society he had to sign that constitution, and when he did sign it, it regulated, determined

and controlled his rights of ownership and property rights in the property of the society.

Put in a little different light, the signing of the constitution was indispensable to membership in the society, and by the very act of signing the new member became a party to the written contracts, the provisions of which fixed his rights in and to the common property of the society.

The very agreement which assured him of membership in the society, and gave him whatever his rights of property were, also limited and determined the extent of those rights.

One of the reasons why the agreement of 1827 was made was, quoting its words,

> "that the condition of membership should be clearly understood, and that the *rights* and *privileges* and *duties* of *every individual therein* should be so defined as to prevent mistake or disappointment on the one hand, and contention or disagreement on the other."

The agreement of 1847 provides that:

> "New members when admitted shall subscribe this agreement as the evidence of their membership and of the rights acquired by and the duties imposed upon them."

That agreement reaffirmed the agreements of 1827 and 1836.

The six agreements forming the society.

Turning now to the Constitution, or written contracts of the Harmony Society, we find that they are at least six in number:

That of 1805, at Harmony, Butler County, Pennsylvania.

That of 1827, at Economy, Beaver County, Pennsylvania.

That of 1836, at Economy, Beaver County, Pennsylvania.

That of 1847, at Economy, Beaver County, Pennsylvania.

That of 1890, at Economy, Beaver County, Pennsylvania.

That of 1892, at Economy, Beaver County, Pennsylvania.

A copy of each of these contracts is annexed to this brief.

All of the ancestors of the plaintiffs, who were members of the Harmony Society, executed one or more of these agreements, and as all of these agreements, in substance, contain substantially the same provisions so far as the property of the society and the rights of the members in reference thereto are concerned, it is unnecessary now to refer to the facts hereinbefore given as to what contract each ancestor signed. Each signed one or more, and so far as this case is concerned it is immaterial which because, at least for this portion of the case, all are alike in substance.

AGREEMENT OF 1805.

Beginning with the agreement of 1805 we note it is between

> "the subscribers of the one part, and George Rapp and his associates (or society) of the other part."

The subscribers on their part,

> "and on the part of our heirs and descendants, *deliver up, renounce and remit all our estate and*

. . .

> *property, consisting of cash, land and chattels, or whatever it may be,* to George Rapp and his associates, in Harmony, Butler County, Pennsylvania, *as a free gift or donation,* for the benefit and use of the community there, and bind ourselves on our part, as well as on the part of our heirs and descendants, *to make free renunciation thereof, and to leave the same at the disposal of the superintendents of the community, as if we never had nor possessed it.*"

The language here is plain and precise:

For his part and his heirs and descendants, each subscriber does—

> "deliver up, *renounce* and *remit* all our estate and property * * to George Rapp and his associates (or society), * * *as a free gift or donation for the benefit and use of the community* there, and *bind ourselves on our part,* as well as on the *part of our heirs and descendants, to make free renunciation thereof, and to leave the same at the disposal of the superintendents* of the community, *as if we never had nor possessed it.*"

The donor is bound, and he binds his heirs, to make free renunciation, so that for the future he will be as if he never had or possessed it.

Human language could hardly more clearly declare that each subscriber forever parted with any right to any property of the society—not alone that he himself contributed, but that which *any one or all of them contributed.*

The agreement is *joint.* It is

> "us the subscribers of the one part,"

and

> "George Rapp and his associates (society) of the other part."

It is

> "we the subscribers on our part * * deliver up, renounce and remit."

All of them *renounce*, *deliver up* and *remit* all their property to George Rapp and his associates (society),

"as a free gift or donation."

All bind themselves to make

> "*free renunciation thereof*, and to leave the same at the disposal of the superintendents of the community *as if we never had nor possessed it.*"

It, therefore, comprises all the property which each and all contributed to the society.

The grantees were

"George Rapp and his associates."

Who these associates were the signed agreement would show. That the original is lost, and we do not now know them, does not affect it.

George Rapp is known and certain. The covenant with him is good.

Article Second is joint and several, and is an agreement to submit to the laws of the society and show obedience thereto, and work for the same.

The idea of work and accumulation of property was in this article. Taken in connection with Frederick Rapp as general agent, and his successors, trade and gain and property accumulation was not foreign to but embodied in their agreements.

Article Third is:

> "If contrary to our expectation the case should happen, and we jointly or severally could not stand to it in the community, and we would within a few or more years break our promises and withdraw from

> the community, for whatever cause it may be, *never to demand any reward, either for ourselves or children or those belonging to us, for any of our labors or services rendered, but whatever we jointly and severally shall or may do, we will have all done as a voluntary service for our brethren.*"

This is joint and several.

If any one

> "withdraw from the community *for whatever cause* it may be,"

the one so withdrawing is

> "*never to demand any reward*, either for ourselves or children, or those belonging to us, for any of our labors or services rendered, but whatever we jointly and severally (have done) shall or may do we will have all done *as a voluntary service for our brethren.*"

This, it is to be noticed, is not merely each one's own labor, but it is joint and several—*the labor of all and of each.*

Then follow the covenants and promises which George Rapp and his society makes to the subscribers.

> "In consideration whereof, George Rapp and his associates adopt the subscribers jointly and severally as members of the community, *whereby* each of them obtains the privilege to be present at each religious meeting; not only they themselves, but also their children and families, shall and will receive the same necessary instructions in church and school, which is needful and requisite for their temporal good and welfare as well as eternal felicity."

George Rapp and his society, in consideration of the covenants and promises of the subscribers, do—

> "adopt the subscribers as members of the community, *whereby* each of them obtains the privilege to be present at each religious meeting; not only they themselves, but also their children and families,

> shall and will receive the same necessary instructions in church and school which is needful and requisite for their temporal good and welfare, as well as eternal felicity."

Here is a statement of the effect and consequences of an adoption, and what rights the adopted thereby acquires are specifically stated.

So far the adoption as members insures them and their families attendance at religious meetings, and necessary instructions in church and school, which is needful for their temporal good and eternal felicity, but nothing else.

Then follows—

Article II:

> "George Rapp, and his associates (society), promise to supply the subscribers jointly and severally with all the necessaries of life, as lodging, meat, drink and clothing, etc., and not only during their healthful days, but also when one or more of them become sick or otherwise unfit for labor, they shall have and enjoy the same support and maintenance as before; and if, after a short or long period, the father or mother of a family should die, or be otherwise departed from the community and leave a family behind, they shall not be left widows or orphans, but partake of the same rights and maintenance, as long as they live or remain in the community as well in sick as healthful days, the same as before, or as circumstances or necessity may require."

These promises are :

To supply the subscribers with all the *necessaries of life*, as lodging, meat, drink, clothing, etc.

These shall be furnished not only during healthful days, but when one or more is sick or unable to work they shall have the same support and maintenance as if well.

If the father or mother of a family,

> "should die, or be otherwise departed from the community,"

and leave a family behind, they shall not be as widow or orphans,

> "but shall receive and partake of the same rights and maintenance *as long as they live and remain in* the community, as well in sick as healthful days, the same as they had before or as circumstances or necessity may require."

This assures support to the family so long as they remain in the community.

All these promises are either to the subscribers personally, or to their families, and are all personal and relate to their spiritual and material welfare while they remain members of the Harmony Society. No one of them extends *beyond* the actual membership in the Harmony Society. It is only while a member the promises are binding. Death, or departure from the society, terminates the liability of the promissor. Indeed, the nature of the promises could only be carried out during the continuance of the relation.

Only during such continuance could they attend religious meetings, and receive the necessary instructions in church and school, and be furnished with lodging, meat and drink.

Then comes *Article III*, which is in these words

> "And if the case should happen as stated above, that one or more of the subscribers, after a short or a long period, should break their promise and could or would not submit to the laws and regulations of the church or community, and for that or any other cause would leave Harmony, George Rapp and his associates *promise to refund him or them*, the value of his or their property brought in without interest, in one, two or three

annual installments, as the sum may be, large or small; and if one or more of them were poor and brought nothing in the community, they shall, provided they depart openly and orderly, receive a donation in money, according to his or their conduct while a member, or as he or their circumstances and necessities may require, which George Rapp and his associates shall determine at his or their departure."

This did not qualify the unqualified gift under section 1, into a base fee, or limited trust. It did not impress with a trust the free gift or donation. It was merely a covenant to return without *interest* the value of the thing given—not its value increased with (70) years' work of others. The value of the property brought in only.

It is to cover the case of a withdrawal from the society, and does not include death in the society.

This withdrawal, as also see preceding Section III., is recognized as a breach of contract by the one so withdrawing, for it says:

"should break their promise and could or would not submit to the laws and regulations of the church or community, and for that or any other cause would leave,"

then, and in that event,

"George Rapp and his society promise"

to do what?

(*a*) To refund him or them the value of his or their property brought in, without interest, in one, two or three annual installments, as the sums may be, large or small.

(*b*) And if the departing brought nothing into the society, yet, if they depart openly and orderly,

he shall receive a donation in cash money, according to their conduct, or as circumstances and necessities may require, which George Rapp and his society shall determine at his departure.

This applies only to such as withdraw. It does not include the estates of those who died.

The promise is to refund, without interest, the value of the property put in, payable in installments.

If no property was put in, then, if they have behaved, and depart openly, each will receive a

"*donation in money * * which George Rapp and his society shall determine* at his or their departure."

It seems obvious—

(*a*) That the present bill in equity is not brought for a breach of this contract. There is no averment in the bill that on the withdrawal the society refused to perform its part of this contract.

(*b*) There is no evidence that any one of the withdrawing members, under whom the plaintiffs claim, ever contributed any money or property to the society.

(*c*) There is no averment that any one of the withdrawing members ever demanded a return of any property alleged to have been contributed.

(*d*) If it was such a case, the last withdrawal was over fifty years ago, and would be ruled out under the Henrici and Speidel case—cited *supra*.

On the contrary, the plain theory of this bill is that so long as the society was in existence, carrying out its purposes, no one of the plaintiffs had any enforceable claim whatever.

The claim they now set up arises solely and only because they say the society is *dissolved*, either by common consent, or by reason of abandonment of its principles, and such dissolution happened after Duss became a member, in 1890. The trust denounced in paragraph 26 as ended, is only ended because the society has been dissolved.

It would seem certain that under this agreement, death, or withdrawal from the society during life, terminated the connection, except as to a family left in the society, and all the rights of each in any way to any of the property of the society. If it did not, if the withdrawing member still had his interest in the common property of the society, why was anything paid to him?

If he only conveyed a base fee—if he had a reversionary interest—why pay him the value of his contribution?

Only as a member did any one directly, or indirectly, have any rights, of, in, to, or out of the society property. These rights, even as a member, were limited to the precise things shown in the agreement analyzed, and they were, attendance at religious services, schooling and maintenance, embodying lodging, food, clothes, etc.

No one could withdraw and, after his withdrawal, claim to participate in the worship, or have the food, lodging, etc.

The withdrawal was contrary to his covenant to labor for the society, and to show due and ready obedience to the superintendents and laws.

By his withdrawal he violated these.

Refusing to perform his covenants, he could not insist on performance by George Rapp and his associates of their covenants.

Being no longer a member of the Harmony Society, he could not have any so called rights of property, or other rights, which, as a member, and solely because he was a member, he might insist on.

Withdrawal, or death, under the agreement, terminated all rights any member of the society had to any of its property, or to participate in any of its rights, or to receive support and maintenance from it.

If a family was left behind, then, as long as they lived, and remained in the community, they should be supported.

But this was the sole extent of the rights, even of the immediate family, and these rights continued only

> "as long as they live and remain in the community."

This agreement introduces no question of faith, or of peculiar religious belief. The society is not founded for the furtherance of any kind of religious belief or conduct. The contract is simply and solely a civil one, regulating the rights of the members. It contains nothing except the contractual relations between the individuals, and also, between the individuals and George Rapp and his society. Its evident purpose would have been destroyed if members could have partition, or sell their rights, or impart them to strangers, or if these rights descended to heirs, for in a few years outsiders would be in control. The society was supreme. The individual was nothing, except as a part of the society.

AGREEMENT OF 1821.

There is annexed to the answer a copy of the agreement of 1821, but there is no proof of its execution, and it has not been offered in evidence. It does not, however, differ from the contracts of 1805, 1827, 1836, which we consider and it is unnecessary to discuss it at length.

AGREEMENT OF 1827.

Then comes the agreement of March 9th, 1827.

The agreement of March 9th, 1827, is substantially the same as that of 1805, except in its preface or recital as to what the community is and what its purposes are.

That recital asserts that

> "By the favor of Divine Providence, an association or community has been formed by George Rapp and many others."

That such a community is

> "upon the basis of Christian fellowship."

That "the principles" of such fellowship have been

> "faithfully derived from the sacred scriptures,"

and such principles

(*a*) Include the government of the patriarchal age,

(*b*) United to the community of property adopted in the days of the apostles,

(*c*) Wherein the single object sought is to approximate, so far as human imperfections may allow, to the fulfillment of the will of God by

(1) the exercise of those affections, and

(2) the practice of those virtues,

(3) which are essential to the happiness of man in time and throughout eternity.

This analysis would seem to show that "Christian fellowship" is that upon which the society is founded.

That the principles of such fellowship are derived from the sacred scriptures, and are,

(1) Government of the patriarchial age;

(3) Community of property as in the days of the apostles;

The single object of the society is

"to approximate * * to the fulfillment of the will of God."

The mode in which this is to be done is,

(1) By the exercise of those affections, and

(2) The practice of those virtues,

(3) Which are essential to the happiness of man in time and throughout eternity.

The definite and particular things which this preface designates are Christian fellowship and the government of the patriarchial age, as it is found in the Scriptures, and community of property, as in the apostles' days.

The object sought is the fulfillment of the will of God by the exercise of the virtues and affections which are essential to happiness here and hereafter.

What is community of goods?

An economic system which obliterates private property.—Webster. Nolsey on *Communism.*

The society or State is supreme; the individual, the child supported by it. What the exact rules of communism which the apostles had, and how far they absolutely extinguished individual ownership, is not known, and hence, the agreement does not leave the rights and privileges and duties of members to be extracted from this general language.

It states that for the

> "good order and well being of said association"

t is necessary that

> "the condition of membership should be *clearly* understood, and that the *rights*, and *privileges*, and *duties* of *every* individual therein should be so *defined* as to prevent mistake or disappointment on the one hand and contention and disagreement on the other."

Therefore all of the individuals

> "do severally and distinctly, each for himself, covenant, grant and agree to, and with the said George Rapp and his associates as follows:"

In substance the "as follows" is the agreement of 1805, stated in more precise language.

The "as follows" comprises six (6) articles, which may be skimmed as follows:

Article I:

We, for ourselves, heirs, executors and administrators, do hereby

> "give, grant and forever convey to the said George Rapp and his associates, and their heirs and assigns, all our property, real, personal and mixed, * * * *as a free gift or donation for the benefit and use of the said association or community.*"

Did these members suppose they were only conveying a part of their title, and holding back a part?

Each one when he signed affirmed community of goods, which, in itself, was a parting with private ownership.

The covenants are express and implied, both as to negation of private ownership, with a covenant for further assurance, if necessary,

> "to vest a perfect title to the same in the said association, and to place the said property at the *full disposal* of the superintendents."

Article II.

Covenants to faithfully submit to the laws and regulations of the community, to obey the superintendents, to promote the interests and welfare of the community

> "not only by the labor of our own hands, but also by that of our children or families, and others who now are or hereafter may be under our control."

Article III:

If we could not render faithful obedience, or for any cause withdraw from the society, in that case

> "we do *expressly* covenant and agree to and with the said George Rapp and his associates, that we *will never claim or demand*, either for ourselves, our children, or for any one belonging to us, *directly* or *indirectly*, any *compensation*, *wages*, or *reward* whatever, for our or their labor or services rendered to the said community, or to any member thereof; but whatever we or our families, jointly or severally, shall or may do, all *shall be held and considered as a voluntary service for our brethren.*"

Article IV:

In consideration of these preceding covenants, George Rapp and his society

> "adopt the undersigned, jointly and severally, as members of the said community, *whereby* each of them obtains,

(1) The privilege of attending every religious meeting, and,

(2) Receiving instruction in church and school for themselves and families,

> "as may be reasonably required both for their temporal good and for their eternal felicity."

Article V:

Rapp and his associates

> "further agree to supply the undersigned severally with all the necessaries of life, as clothing, meat, drink, lodging, etc., for themselves and their families."

This is to cover their days of sickness. And, in addition, they shall have

> "such medicine, care and attendance and consolation as their situation may reasonably demand."

If a member, who is father or mother, die,

> "or be otherwise separated from the community, and leave their family behind, such family shall not be left orphans or destitute, but shall partake of the same rights or maintenance as before, *so long as they remain in the association.*"

Article VI:

If any member for any reason withdraws from the association

> "then the said George Rapp and his associates agree to refund to him or them *the value* of all such property, without interest, as he or they may have brought into the community, in compliance with the first article of this agreement, and the said value to be refunded in one, two or three annual installments, as the said George Rapp and his associates shall determine."

If the party brought nothing in, yet, if he departs openly, he shall

> "receive a donation in money, according to the length of their stay, and to their conduct, and to such an amount as their necessities may require in the judgment of the superintendent of the association."

So far as the rights of the individual are concerned, this agreement of 1827 left them where that of 1805 did. No one had any individual specific right in, or claim to, any of the property of the Harmony Society. The sole right the individual had was as a member of the community, and that was a common joint right, several only in what the covenants of the agreement gave him. These were, attending religious meetings, instruction in church and school, clothing, food,

etc., and general support. If he withdrew, and his family remained behind, so long as they remained they were to be supported. On withdrawing, the value, without interest, of the property contributed was to be repaid. If no property had been contributed, a donation in money to be fixed by the superintendent was to be given.

But the rights of the individual were all personal. They ended with his or her death or withdrawal. He never did have any right to any of the property of the society, except as he was part of the society, and when he died or withdrew neither his heirs nor personal representatives had any right or claim to the same. It, in some sense, resembles a member of a church or village, who, so long as a member, enjoys the property of the church or village, but as soon as he leaves or dies this right, which was personal, ceases. Unlike a village, the number of whose inhabitants is uncertain, this society was fixed and definite in its membership, all evidenced by the written agreements signed by the members.

The property he brought into the society, and the work he did while in it, were the consideration for the support, maintenance, etc. They were declared to be a free gift by him to to the society. Had it not been for Article VI he could not have claimed a return of the value, but that value was limited to cases where one withdrew, (not when he died in the society). Then, it was the value without interest. It was not the indentical thing contributed, but the value, without interest, and such value was to be repaid in one, two and three years.

If one withdrew and demanded the return value, and the society refused to pay it, probably an action would lie; but it would be a personal action, and on his death, if it survived, would go to his personal representatives, *i. e.*, executors or administrators.

In no case had the individual member aught that descended to his heirs at law.

The withdrawal, or death, absolutely and finally severed the tie which bound the individual to the society, and terminated his right to demand the fulfillment of any covenants, or intermeddling in any way with any of the property of the society. No matter what was done by the society after his death or withdrawal—no matter what disposition it made of the property of the society—no injury was done to the departed member. He was not wronged. He no longer was interested therein, and he could no more interfere than a perfect stranger.

The preface did put the society on the basis of Christian fellowship, and it fixed, as its guiding principles, the government of the Patriarchal Age and the community of goods.

I suppose that this government of the Patriarchal Age meant some one as the head of the family or tribe, which family or tribe would include the children, grandchildren and collaterals, but it seems hardly necessary to trace it out now, owing to the change made after Rapp's death by the Article of 1847.

See 3 Wallace, Jr., 70.

The communism was specifically stated to be

> "the community of property adopted in the days of the apostles."

What was that?

The only references to it in the Holy Scriptures are in the Acts of the Apostles.

During the Pentacostal glory, when the apostles did many signs and wonders, fear came upon every soul, and in Acts, chapter 2, verses 44 and 45, it is recorded:

> "And all that believed were together and had all things common; and sold their possessions and goods, and parted them to all men, as every man had need."

In chapter 4, after telling of the signs and wonders the apostles John and Peter did, it is said: (verses 33,34, 35.):

> " * * and great grace was upon them all. Neither was there any among them that lacked; for as many as were possessors of lands or houses sold them and brought the prices of those things that were sold, and laid them down at the apostles' feet, and distribution was made unto every man according as they had need."

Barnabas sold his land and gave in the money, but Ananias and Sapphira were stricken with death for keeping back part of the price they sold a "possession" for.

The community of goods the Harmony Society founded was more general and broader, but it was but a part of the agreement of 1827, which provided in the most specific manner to detach any individual right or claim of any one individual to the common property, and it emphasized what was already really implied, in the contract, that it depressed the individual and elevated the community.

The community was everything. The individual nothing, except as he was protected by express covenants.

The single object of the community was (what, theoretically, all governments are for), that each should within its sphere approximate, as far as human imperfections will allow,

> " to the fulfillment of the will of God,"

by the

> "exercise of those affections, and the practice of those virtues, which are essential to the happiness of man in time and throughout eternity."

To fulfill the will of God is every one's duty—indeed, in one sense, every one's destiny.

The affections and virtues, by the exercise of which the Harmony members were to effect this, are not enumerated.

Every state or society, large or small, in a Christian land, seeks in some way to fulfill a part of the will of God, and to do it in some appropriate, and by some efficient manner, and this agreement of 1827 in this respect differed from no other government or society, except, that it specifically stated its *single object*, and prefaced it by agreeing that the best mode of accomplishing this result was government of the patriarchal age and community of goods.

AGREEMENT OF 1836.

The agreement of 1836 follows that of 1827. It repeals Article VI. of the agreement of 1827, and makes more emphatic—but I do not think any more certain—the proposition that the individual had no separate and specific property or rights in property of the society, but his rights were in common with all, and in their nature joint. His death or withdrawal cut him off from the society and all its property. It differs especially from all prior agreements in taking away the right of a return of value.

After reciting *in extenso* Article VI. of the agreement of 1827, it provided as follows:

"*And whereas*, The provisions of the said 6th article, though assented to at the time, manifestly *depart* from the great principles of a *community of goods*, and may tend to foster and perpetuate a feeling of inequality at variance with the true spirit and objects of the association;

"*And whereas*, The principle of restoration of property, besides its pernicious tendency, is one which cannot now be enforced with uniformity and fairness, inasmuch as the members of the association, in the year 1818, under a solemn conviction of the truth of what is above recited, did destroy all record and memorial of the respective contributions up to that time;

"*And whereas*, Continued happiness and prosperity of the association, a more intimate knowledge of each other, have removed from the minds of all members the least apprehension of injustice and bad faith;

"*Now, therefore*, Be it known by these presents that the undersigned, with a view to *carry out fully the great principles of our union*, and in consideration of the benefits to be derived therefrom, do hereby solemnly enter into covenants, and agree with each other, as follows:

"1st. The said Sixth Article is entirely annulled and made void, as if it had never existed; all others remain in full force as heretofore."

Then came

Article 2d:

"All the property of the society, real, personal and mixed, in law or equity, and howsoever contributed or acquired, shall be deemed now and forever *joint and indivisible stock*. Each individual is

> to be considered to *have finally and irrevocably parted* with all his former contributions, whether in lands, goods, money or labor, and the same rule shall apply to all future contributions, whatever they may be."

To me, this does not add to what was contained in the agreement of 1827, except that it is stated in more specific words.

All the property of the society is declared to be

> "joint and indivisible stock."

But this is what it was under the contracts of 1805, 1827. Community of goods necessarily implied it.

It, therefore, assumed a joint tenancy, which included the right of survivorship, and therefore forbade the idea of a division.

See Kennedy's Appeal, 60 *Pa. St.*, 511.

The individual

> "*finally* and *irrevocably* parted with all his * * contributions,"

past or future.

He no longer had any right of property in any of the property he had handed in.

Then came

Article 3d:

> "Should any individual withdraw from the society or *depart this life, neither he, in the one case, nor his representatives in the other, shall be entitled to demand an account* of said contributions, whether in land, goods, money or labor, *or to claim anything* from the society as matter of right. But it shall be left altogether to the discretion of the superintend-

> ent to decide whether any, and if any, what, allowance shall be made to such member or his representatives as a donation."

What about a base fee, reversionary rights, limited trusts? Read Articles 2 and 3. Did they suppose when they said *finally and irrevocably parted* they did not mean it? But only meant they granted a limited estate? Turn back to Agreement of 1827.

Here, again, the idea involved in the Agreement of 1827 is more explicitly and plainly stated, but to my vision it is clearer than it was in the agreement of 1805 and 1827, only, because the language is bolder and more pronounced.

Each individual's connection with the society was personal. Membership was the life of the connection. Its dissolution by death or departure from the society ended the membership. This ended the personal connection, and hence, ended all the claims and rights in and to the society and any of its property.

This was in the Agreement of 1805 and 1827, and the Agreement of 1836 only stated it in more glaring words.

It reiterated, that, in case of death or withdrawal, there shall be no right on the part of any one

> "to demand an account of said contributions, whether in land, goods, money or labor,"

and then it added,

> "or to claim anything from the society as matter of right."

He was wholly cut off, and to the superintendent was left the decision of the question,

> "whether any, and if any what allowance shall be made to such member or his representatives as a donation."

George Rapp's death on August 7th, 1847, led to the preparation and execution of a new agreement dated August 12th, 1847.

AGREEMENT OF 1847.

It recited Rapp's death, and averred it was necessary,

> "that some plan should be agreed upon to regulate its future affairs, promote its general welfare, and preserve and maintain it upon its original basis."

Therefore,

> "* * * the surviving and remaining members of the Harmony Society, *and constituting the same*,"

do severally

> "covenant, grant and agree to and with all the others thereof,"

as follows:

Article 1st:

> "Recognize, re-establish and continue,"

the Articles of 1827, save Article VI, and that of 1836,

> "*except* so far as the same are affected by the death of the said George Rapp, or hereinafter altered or modified, and to this extent we declare the said articles to remain in full force."

Article 2nd:

> "We hereby ordain and establish a board of elders, which shall consist of nine members of the Harmony

Society, and their successors to be chosen as hereinafter provided."

t will be noticed that the one qualification for an elder was t he or she should be a member of the Harmony Society. e sex of the elder was not inquired into, and there is nothin the Agreement of 1847 to prohibit a woman from fillthe office.

Article 3rd:

"The board of elders shall have and exercise the following powers, to-wit:

"1st. To regulate and manage *exclusively* the *internal*, temporal concerns of the Harmony Society; to appoint and remove superintendents in the several departments of industry; to make regulations and give orders in relation to their business operations, and generally to take care that the members perform the duties assigned to them."

Here is given to the board

"the exclusive management of the eternal, temporal concerns of the society."

Not of a portion, but of all of them. And the power is en to manage *exclusively*, not in conjunction with others, as others shall think best, but the power is absolutely ged in the elders.

hen, they also have the power to appoint and remove erintendents in the several departments of industry, to e regulations and give orders as to the business operations ach, and generally to see that the members do what they ordered to do.

will be noticed that discretion was left with the elders as hom they would appoint superintendents. They are not

required to appoint members of the society, but are left in that respect to the exercise of their own judgment.

> "2nd. To determine all disputes and misunderstandings amongst the members of the society; to advise if necessary, reprove any member who may be in fault, or found delinquent in his duty."

This established the elders as a court for the settlement of all disputes and misunderstandings amongst the members of the society."

> "3rd. To admit new members into the society, and to expel them therefrom. *New members when admitted shall subscribe this agreement* as the evidence of their membership, *and of the* rights acquired by, and the duties imposed upon them."

The prerequisite to membership in the society was, as all the oral testimony in this case agrees, and it is, and ever has been, that the member joining shall

> "subscribe this agreement as the evidence of their membership."

There was no other evidence of membership than the signature to the agreement, and this was a *sine qua non* to membership.

Then this agreement not only evidenced the membership, but, in addition, stated,

> "the rights acquired by, and the duties imposed upon them."

Thus, the Agreement of 1847, and the preceding agreements of 1805, 1827, and 1836, when examined, would specifically determine the rights of each member, and the duties of each member.

> "4th. To establish regulations for the maintenance and improvement of the morals of the society, and for the instruction of its members."

"5th. To appoint one or more of its members spiritual leaders and instructions with such authority in relation to church discipline as shall be conferred by the board."

"6th. To remove from the Board of Elders and to declare his seat vacated, also to remove from office either or both of the trustees hereinafter appointed for the management of the external affairs and their successors in office."

"7th. To fill all vacancies in the Board of Elders, occasioned by the death, resignation or removal from office any of its members and their successors, and so as often as a vacancy shall occur, to fill all vacancies in the office of trustee, when either or both of the trustees or their successors, shall die, resign his office, or be removed from the same, and so often as a vacancy shall occur."

"8th. The concurrence of six members of the Board of Elders shall be deemed the act of the board and a legal exercise of any of the powers hereinbefore conferred on the said board."

This Board of Elders is said to be un-American, self-perpetuating, despotic. But what was the patriarchal government of Father Rapp? What power did he possess? Read paragraph 1 of the bill.

A further provision was for a book of record, which should

"full and absolute evidence of the facts and proceedings therein contained,"

but such book does not seem to have been kept.

Article 4th:

"We do further ordain and establish a Board of Trustees for the *exclusive* management of the *external* business and affairs of the society, which board shall consist of two persons, who shall be members of the

Board of Elders, and their successors, who shall be appointed as hereinbefore provided."

EXTERNAL BUSINESS.

This Board of Trustees was for

> "the exclusive management of the *external* business and affairs of the society."

It was to consist of two persons, each of whom was to be a member of the Board of Elders.

What did they mean by *external* business? It was contrasted with internal. It was not, then, the shops in Economy, or the farm, or the dairy, or the home store.

It was *external*, and it was *external business*, external affairs.

What does that include? All kinds of business. *All kinds of affairs.* Broadness of language.

Article VI

> "The said trustees shall jointly and severally have and exercise the powers following:"

Note that the power is joint and several. Not merely a joint, but also, equally several.

> "In *their own names* or that of *either of them, or otherwise*, to purchase and *sell*, deal, barter, exchange, and traffic, make all contracts and bargains in the prosecution of the business, to invest the funds in stocks and other securities, and make transfers and assignments, to collect debts, receive

and pay out moneys, settle claims, compromise disputes, institute legal proceedings, appoint and dismiss agents, clerks, and attorneys in fact, and at law, *and generally to transact all the external business affairs of the society.*"

It is now said their sole power was to invest funds as trustees usually do. This is but one of their powers.

Ratification and adoption by agreement of 1890. Read it.

The bill approved all of these until 1890, but now they are all void.

Couldn't make partnership. Why not?

The agreement expressly authorized the trustees

"in their *own names, or* that of either of them, or otherwise"

to do what?

Merely invest trust money as an ordinary trustee, as the appellants now allege?

By no means.

But, also, to

"purchase and sell, deal, barter, exchange and traffic, make all contracts and bargains in the prosecution of the business, to invest the funds in stocks and other securities."

There is no limit whatever to

"the business"

o be prosecuted.

In all respects the trustees might

"sell, deal, barter, exchange and traffic."

And, in addition, the trustees are authorized

> "generally to transact all the external business affairs of the society."

Under these agreements, and, especially, since 1847, the trustees carried on and engaged in almost every conceivable business.

They were in the oil business; they were oil producers and oil refiners; they were in the business of the manufacture and sale of glass, of iron, of steel, of all kinds of hardware and cutlery and files, of cars, of woolen goods, of silk goods, of bicycles, of whiskey, of beer, of wine.

They laid off plan of and sold lots, and, really, built up Beaver Falls thereby.

They ran saw mills, great and small.

Were largely in the timber business and coal business.

They built railroads and were a large factor in the construction of the Pittsburgh & Lake Erie Railroad.

They organized a bank, and for years it was one of the largest in Western Pennsylvania.

They did business in their own names and the name of others. They had agents and partners.

They did all this prior to 1890, during which period the bill in this case says the society was perfectly conducted.

In 1890, all the then members of the Harmony Society executed a new agreement, which recited and approved of the prior agreements, but, also, specifically approved of everything the trustees had done.

The agreement enacted as follows, (see Record, vol. 1, pp. 71, 72):

> "We do hereby approve and confirm any and all acts, matters and things done and transacted by the board of elders of the Harmony Society, as the same was from time to time constituted, since the date of the articles aforesaid, establishing said board, and

we hereby ratify and confirm the appointment of the present board of elders, to wit: Jacob Henrici, Ernest Woelfel, Michael Staib, Johannes Scheid, Moritz Frederick, Gottfried Laupp, J. Jacob Niclaus, Herman Fishern and John S. Duss.

"We do also hereby approve, ratify and confirm all acts, matters and things done, transacted and performed by the *Board of Trustees of the Harmony Society*, constituted first, of Romelius L. Baker and Jacob Henrici, until January 11th, 1868; afterwards, and from that date until January 21st, 1890, of Jacob Henrici and Johnathan Lenz, and since the last mentioned date, of Jacob Henrici and Ernest Woelfel, hereby ratifying, confirming, holding, declaring as good and effectual in law and in equity, all acts, matters and things done, transacted and performed by each and all of said trustees in the purchase and sale of personal property, and in the making of contracts, investment of funds, purchase, sale and transfer of stocks, bonds and other securities, loaning or borrowing money, collection and payment of monies, settlement or compromise of claims or disputes, in the institution and prosecution of legal proceedings, in the employment and discharge of attorneys in fact and at law, in the making of donations, in the purchase of real estate, and in the sale thereof, in the execution and delivery of deeds, conveyances, transfers and assignments, whether of and pertaining to real or personal estate, in the execution or delivery of notes or obligations of any kind and generally all acts heretofore done by said trustees, in the conducting, managing and transacting of the business of the society, and whether done by said trustees or either of them, severally and in his own name as trustee, or jointly in the joint names of himself and his co-trustee."

Yet, with all this, it is now said that the only power the trustees had was to loan money!

There is no limitation which confines them solely to external business and external affairs transacted by themselves. All the *external business* was committed solely to them, and

also the mode of its transaction, whether separately or jointly with others.

They could then do this in the name of any other person, natural or artificial. There is no limitation put upon the business which the trustees may engage in, nor the manner in which, nor the extent to which, this shall be done. This is left to the discretion of the trustees, and they are given absolute, unlimited and supreme power,

> "to transact all the external business and affairs of the society."

The trustees, at any time, could change real into personal property, and personal property into real. They, therefore, could convey real estate, and accept in lieu thereof personal property, such as stock or money.

> "2d. To make donations to seceding and excluded members and to the representatives of those who are deceased and for such benevolent and charitable purposes as they may deem prudent and fit."

The donations, it will be noticed, were to those withdrawing and the representatives of the dead, and for benevolent and charitable purposes. The size of such donations, and when, and to whom given, are left exclusively with the trustees.

> "3rd. The said trustees shall have power jointly to purchase real estate in their own names and also in their joint names to grant, bargain, sell and convey all or any of the lands and tenements now or hereafter owned by or belonging to the said society, and for this purpose to execute deeds of conveyance in fee simple or otherwise in their joint names, but the proceeds of all such sales shall be held in trust for the society."

> "4th. This provides for the rights of possession, entry and action in reference to litigation connected with the society's property."

> "5th. The powers hereby vested in the said trustees shall extend to and embrace all the property of said society, real, personal or mixed, whether standing or held in the name of the late Frederick Rapp, the said George Rapp, or in any other name or form whatsoever."

This last is a reiteration of the broad powers of the trustees and extends to all the property of the society, real, personal and mixed; and it is also an affirmation of the proposition that the property was not then necessarily held in the name of any one person, for the agreement says :

> "whether standing or held in the name of the late Frederick Rapp, the said George Rapp, or in any other name or form whatsoever."

Article 6th:

Declares that the entire property—real, personal and mixed—of the society

> "shall be *deemed the common property of said society*, and each trustee now or hereafter appointed hereby disclaims all *personal interest* in the present resources and future earnings of the society, *other than that of a member* thereof, according to the articles of association hereby reestablished and continued; and according to the present agreement."

This again affirms that the community owns the property, and that the individual had no specific, separate, personal rights thereto, or thereunder. His personal rights were under the covenants made to him. His rights as a member of the society, as a part of the indivisible whole, were in common with all members, and were joint, and terminated and ceased—as did also his right to enforce the covenants—when he died or departed from the society.

His right was wholly and solely, and only an individual and personal right, which did not survive him, which he could not sell or will, and of which he could not ask partition.

The agreement of 1847 did not alter the provision of the said contracts of 1805, 1827 and 1836 in reference to the rights, duties and interests of the individuals composing the Harmony Society; but it did change the government from the individual patriarch, who was the supreme ruler, to a government by and through a board of elders and board of trustees, who had the powers of a patriarch. Under the absolute patriarchal government the patriarch appointed his successor, as he this day does in some of the tribes in Asia and Europe.

The respective rights of the individuals who composed the Harmony Society were not enlarged, but so far as the property right is concerned, were practically left where they were, except that these rights were made subject to the governing powers of the board of elders and the board of trustees.

It is not necessary to further examine now the agreements of 1890, 1892 and 1894. Nothing in either of them changes any of the provisions of the former agreements. Each adopts, confirms and approves all said prior agreements.

CONCLUSIONS AS TO MEANING OF CONTRACTS.

In a broad, but perfectly correct way, these agreements may be defined as contracts between the joining member and

all the others who then constituted the Harmony Society, and also contracts *inter sese.*

Each, on joining, gave up all—promised obedience and work in consideration that the society would feed, clothe, maintain and educate each for his or her life, and their families after them, so long as the joining member or his family continued in the society.

A breach of his covenant of obedience or of work—and especially his withdrawing from the society—rendered it impossible for him to insist upon the performance of the covenants by the society. These covenants were dependent. Only while he was a member and worked for it was he entitled to performance for his benefit.

The very nature of the covenants of the society made shows they were only personal to the joining member, and for his life, not for his remote descendants. They were:

(*a*) To adopt him as a member.

(*b*) *Whereby* (that is, because of his membership), he obtains the privilege of being present at every religious meeting, and of receiving instruction in church and school.

(*c*) The society is to supply him with the necessaries of life—clothing, meat, drink, lodging, for themselves and their families, and this includes their days of infirmity, when unable to labor.

(*d*) When sick, medicine, attendance and consolation.

(*e*) If die, and leave family, they shall be provided for,

"so long as they remain in the society."

(*f*) Return of value of contribution if withdraw.

The gift, or donation, was absolute, it and the covenant of obedience and work was the consideration for the adoption as a member, the church and school privileges and the furnishing of meat, drink, lodgings, medicines, support of family and return of value on withdrawal, (*but only on withdrawal.*)

The contract, *inter sese*, was the affirmation of the general policy of the society, and its objects and purposes.

THOSE WHO COMPOSED THE SOICETY AT ANY ONE TIME ALWAYS FROM 1805 DOWN TREATED ALL ITS PROPERTY AS BELONGING TO THEM.

Attention, however, should be called to a most significant construction, which the society itself put upon the power of its members at any time, and that was, that the persons who at the time constituted the members could make such new contracts as they saw fit, and this without any reference to the heirs of those who were dead, or to those who had left. This right was constantly asserted from 1805. It was done in 1805, 1821, 1832, 1836, 1847, 1890. It was in the most pronounced manner the assertion of the right of the community as it existed at the different times to add to, alter and change the written contracts.

In 1827 it added to the contract of 1805 the Patriarchal Government and Communism.

In 1836 it struck out Article VI of the contract of 1827.

In 1847 it organized a new mode of government. It substituted a Board of Elders and Trustees instead of the patriarch and general agent, but gave them only the patriarch's power. No member denied the right. No heir of any member.

RULES OF CONSTRUCTION.

This asserted and exercised right was a practical and continued change in, and construction of, the then existing articles of agreement, and the assertion of the right of the surviving members, as a community, to all the property of the society, and to govern it as they saw fit, that the individual member who died or withdrew cut himself off from and terminated all his rights to the society or its property.

There is no surer way to ascertain the meaning of a contract, and the rights of parties under it, than to see what the parties have done in carrying it out.

Its practical interpretation

> "is entitled to great, if not controlling, influence."
>
> Topliff vs. Topliff, 122 *U. S.*, 131.
> Merriam vs. U. S., 107 *U. S.*, 437.
> District of Columbia vs. Gallaher, 124 *U. S.*, 505.
> Lehigh Coal Co. vs. Harlan, 27 *Pa.*, 439.

The contract of 1847 was not a departure or change of the former agreements. It reaffirmed them.

Only change of plan of *who* exercised patriarch's powers.

FREDERICK RAPP'S AGENCY.

Prior to the agreement of 1847, the society had what was termed a general agent, or an agent in temporal affairs. Frederick Rapp, the adopted son of George Rapp, for a long time was such agent, and on the death of Frederick Rapp, in 1834, George Rapp, himself, was appointed such agent.

(See the appointment dated July 5th, 1834, and offered in evidence as "Exhibit 85").

Such agent has the general power to transact the business of the society, and to hold in his own name all the property of the society, but it was distinctly provided in the instrument appointing him, as it had been distinctly declared by Frederick Rapp, under his own hand and seal, in the instrument of 1825, referred to in the present exhibit, as follows:

> "It is distinctly understood that in accepting and acting under this power, the said George Rapp disclaims all *personal interest* other *than that of a member of said society* in the present resources or future earnings of the society in conformity to the principles and terms upon which the Harmony Society was originally founded, as fully and effectually as was done by the late Frederick Rapp in the instrument already adverted to, dated 20 July, 1825, the terms of which said instrument the said George Rapp adopts for himself and repeats in every particular."

BILL SEEKS DISTRIBUTION OF SOCIETY'S PROPERTY.

What the present bill in equity really seeks to accomplish through the remedies by injunction, receiver, and a decree for an account—see seventh prayer of the bill—is shown in that prayer, which is as follows:

> "That your Honors will order a decree, a marshalling of the assets which were of the Harmony Society, and a winding up of its affairs, and a division and distribution of its assets, real and personal, either by means of a sale under order of your Honorable Court, or in such other manner as your Honors may deem most expedient to and amongst the parties legally and equitably entitled thereto, including your orators, and that your orators may receive their just share and proportion of said assets, real and personal, in severalty."

The plaintiffs each want in severalty a share of all the property of the Harmony Society.

What does that property consist of?

As per Mr. Dickson's statement, page , certain real and personal estate, subject to certain debts.

When did the society become the owner of such property?

There is no specific answer to this save that *all* of it was purchased or earned after the society located at Economy, in Beaver County, which was in 1824.

APPELLANTS HAVE NO RIGHT TO ANY PART OF THE SOCIETY'S PROPERTY.

The real estate at Economy is its oldest acquisition, and the Leetsdale property and all the personal property was acquired in later years.

It is certain that most of it was acquired in external business or in profits from it.

It is also certain that no one of the plaintiffs, or any other member, could possibly identify the property of any ancestor put into the society.

What possible claim, in law or equity, can either one of these ancestors have to the property the Harmony Society owns in 1896?

Over seventy (70) years ago the connection of each with the society was severed. How is it possible to now put life in such a claim?

If the theory of the plaintiffs be correct, that all the descendants of all persons who ever were members of the Harmony Society may, at any distance of time, after the death or withdrawal of the ancestor, demand an account of, and share in, the property of the Harmony Society, see what it leads to.

Mr. Duss showed, page ——, that there have been 1,050 members of the Harmony Society.

Mr. Schoyer more than doubles it.

The descendants, lineal and collateral, of all these are, under the plaintiffs' theory, entitled to a share in the property, and if they are so entitled they would seem to be necessary parties to this bill.

There would be several thousands of such persons, and even if the society had millions, the share of each would be a trifle.

Why should you limit, as Mr. Schoyer does, the claimants merely to those who gave property? Those who labored a lifetime should not be forgotten.

If it were true that the member who withdrew still held his rights in and to the community and its property, and when he died his heirs at law could assert them, how would you define such rights? What were they? Could the heirs force themselves into the society and demand support? Could the heirs at any time insist on a partition of the property? Could they demand an account, and, if refused, force a settlement? Could the one who withdrew do so?

If so, how futile these written agreements were, and what a weak, instead of a strong, sturdy society the Economites were!

Surely these written agreements never meant that such a result should follow from the practical workings of the society. It would be to give to such decedents, for seventy years after their death, a share in the work and labor of hundreds of persons for many years after their death. If for seventy years, why not for one hundred and fifty?

What part of any one of these articles shows even a leaning towards such a result?

What decision is there, what principle of law, which would even squint at it?

MEMBERS OF SOCIETY AT ANY TIME MAY DISTRIBUTE ITS PROPERTY AMONG THEMSELVES.

Of all things these articles do seem particularly and carefully to accomplish it is that the Harmony Society at all times is composed solely and only of its then members—not of those, and also, all the descendants of its dead and withdrawn members, but of its present actual members.

How would the assets be distributed? There are now eleven (11) members of the society. In all there have been 1050 members. All but eleven have died. Into how many shares would the property be divided? Judge Greer, in the Nachtrieb case, held, to only the present live members.

It is the society, as a society, which owns its property. It is the entire body as one whole. If at any time the society did dissolve, its property would go to the persons who then were its members. No one else has any legal or equitable claim to it except those members. To them, and to them alone, it would belong, and among them it would be divided.

The Society Through Its Trustees Has an Absolute Estate in Fee Simple, Not a Base or Conditional Fee.

The appellant's idea that the property would revert to the donors is based on the idea that the donations were base fees or resulting trusts.

A base fee is a conditional estate by which the estate terminates when the event happens. Grant to A until B returns from Rome, etc. It is applicable to real estate. The condition must be clearly stated in the deed.

Such an estate, therefore, is not an absolute parting with all the donor's interest in the thing granted, but leaves an estate in him, which is carved out of the entire fee simple estate which he owned in the property.

A trust resulting is an implication of law that the grantor or donor parted with his property only to and for a limited and specific use, and when that use terminates the trust reverts. The use, which is thus limited and defined, must appear plainly and expressly in the granting interest.

Now, did the members who joined the Harmony Society intend to grant only a conditional estate, or partial estate, and reserve to themselves a reversion in it?

Each of the subsequent agreements executed by the society also contains such a clause, reciting and conforming the agreements of 1805, 1827 and 1836.

Extracts from the different agreements will conclusively establish this.

The preface to and the first article of the agreement of 1805 are as follows:

> "Be it hereby known to all who need to know it that the following agreement has this day been made and concluded between us, the subscribers of the one part, and George Rapp and his associates of the other part:
>
> Article 1. We, the subscribers, on our part and on the part of our heirs and descendants, *deliver up, renounce and remit all our estate and property consisting of cash, land and chattels, or whatever it may be, to George Rapp and his associates, in Harmony, Butler County, Pennsylvania, as a free gift or donation, for the benefit and use of the community there, and bind ourselves on our part, as well as on the part of our heirs and descendants, to make free renunciation thereof, and to leave the same at the disposal of the superintendents of the community, as if we never had nor possessed it.*"

A part of the preface and the first article of the agreement of 1827 are as follows, (page 53 of the record):

> "Therefore, Be it known to all whom it may concern: That we, the undersigned, citizens of Beaver county, in the Commonwealth of Pennsylvania, do severally and distinctly, each for himself, covenant, grant, and agree to, and with the said George Rapp, and his associates, as follows, to wit:
>
> "Article 1. We, the undersigned, for ourselves, our heirs, executors and administrators, do hereby give, grant, and forever *convey, to the said George Rapp and his associates, and their heirs and assigns, all our property, real, personal and mixed, whether it be lands and tenements, goods and chattels, money or debts due to us, jointly or severally, in possession, or in remainder; or in revision, or in expectancy, whatsoever or wheresoever, without evasion, or qualification, or reserve, as a free gift or donation, for the benefit and use of the said association or community; and we do hereby bind ourselves, our heirs, executors and administrators, to all such other acts as may be necessary to vest a perfect title to the same in the said association, and to place the said property at the*

full disposal of the superintendents of the said community without delay."

Articles 2 and 3 of the agreement of 1836 are as follows, (page 59 of the Record):

"Second. *All the property of the society, real, personal and mixed, in law or equity, and howsoever contributed or acquired, shall be deemed, now and forever, joint and indidivisible stock. Each individual is to be considered to have finally and irrevocably parted with all his former contributions, whether in land, goods, money or labor; and the same rule shall apply to all future contributions, whatever they may be.*

"Third. *Should any individual withdraw from the society, or depart this life, neither he, in the one case, nor his representatives in the other, shall be entitled to demand an account of said contributions, whether in land, goods, money or labor, or to claim anything from the society as matter of right.* But it shall be left altogether to the discretion of the superintendent to decide whether any, and, if any, what allowance shall be made to such member, or his representatives, as a donation.

"Invoking the blessing of God on this sacrifice of all narrow and selfish feelings to the true purposes of the association and to the advancement of our own permanent prosperity and happiness, we have signed the foregoing instrument, and affixed thereunto our respective seals, at Economy, this 31st day of October, 1836."

The agreement of 1847 (pages 61 and 62 of the Record), provides as follows:

"Therefore, Be it known to all whom it may concern, that we, the undersigned surviving and remaining members of the Harmony Society, and constituting the same, do severally and distinctly

each for himself covenant, grant and agree to and with all the others thereof, and with those who shall hereafter become members as follows: That is to say,

"Article 1st. *We do hereby solemnly recognize, re-establish and continue the articles of our association* (the sixth section excepted) *entered into at Economy on the 9th day of March, A. D. 1827, in the presence of John H. Hopkins and Charles L. Voltz, and the supplement thereto, adopted at the same place on the 31st day of October, A. D. 1836, in the presence of Charles L. Voltz and William F. Baum*, except so far as the same are affected by the death of the said George Rapp, or hereinafter altered or modified, and to this extent we declare the said articles to remain in full force."

Here is an absolute, unqualified, definite grant. No use is stated, or hinted at, except the use of the grantees put in all deeds. No estate in reversion ever imagined. No contingency upon which the donor might again regain his property even hinted at. The donor parts absolutely with his estate, absolutely and unqualifiedly, without any reversion.

In the language of the agreement of 1805 it is—

"all our estate and property."

And it is—

"as a free gift or donation."

Binds himself—

"as well as on the part of our heirs and descendants to make free renunciation thereof, and leave the same at the disposal of the superintendents of the community *as if we never had nor possessed it.*"

The agreement of 1827:

The language is—

"do hereby give, grant and forever convey to the said George Rapp and his associates, and their heirs and assigns,"

"all our property, real, personal and mixed, whether it be lands and tenements, goods and chattels, money or debts due to us jointly or severally."

Now, note—

"in possession or in *remainder* or in *reversion* or in *expectancy* whatsoever or wheresoever, without evasion, qualification or reserve."

"As a free gift or donation."

"And we do hereby bind ourselves, our *heirs*, executors and administrators, to all such other acts as may be necessary to vest a *perfect title* to the same in the said association, and to place the said property at the *full disposal* of the superintendents of the said community without delay."

Could there be a more absolute, unqualified parting with all title to the property donated than this?

It names, as if to exclude the idea of a reversion or a resulting trust—

"in reversion or in expectancy."

It binds himself and heirs to make—

"a *perfect title* to the same in the said association."

Not a base fee or a limited trust, but a *perfect title.*

There is no limitation of the uses to which the property might be put.

"For the benefit and use of the said association or community."

Just as our deeds convey to and for the use of the grantee.

No limit to the use.

And then, this is to be a *perfect title*, so that it may be

"at the *full disposal* of the superintendents."

How could it be a *perfect title*, and at such full disposal, if George Rapp and his heirs only got a "base fee," or if the estate was only to endure so long as the society had a "patriarch," or practiced "celibacy," or preached "the second advent"?

Then, the agreement of 1836:

It denounces the idea of "*restoration of property*," as being of "pernicious tendency," and because it would be impossible to enforce it fairly.

It declares that—

> "all the property of the society, real, personal and mixed, in law or equity, and howsoever contributed, or acquired, shall be deemed, now and *forever* "joint and indivisible stock."
>
> "Each individual is to be considered to have *finally* and *irrevocably* parted with all his former contributions, whether in lands, goods, money or labor, and the same rule shall apply to all future contributions whatever they may be."

"*Finally and irrevocably parted.*"

What an absurdity to talk of reserving an interest in the thing granted!

Section 3:

> "3d. Should any individual withdraw from the society, or depart this life, neither he, in the one case, nor his representatives in the other, shall be entitled to demand an account of said contributions, whether

in land, goods, money or labor, or to claim anything from the society as matter of right. But it shall be left altogether to the discretion of the superintendent, to decide whether any, and if any, what allowance shall be made to such member, or his representatives as a donation."

There is, then, in all these articles a marked and expressed intent that the donor parted with all his estate, and neither he nor his heirs, at any time, were to have any claim, or title or right of any kind to any part of it.

The title granted was to be, and was a *fee simple absolute.*

No matter what happened in the future, or who it went to in the end, the donor could not follow it.

Here is the *marked difference* between our case and such cases cited by the appellant as

Cunnach vs. Edwards, 13 *Repts.* (ch) 334.

See as to ownership—

Brown vs. Dale, 9 *Chancery Div.*, (L. R.) 78.

Other absolute impediments to the claim of appellants are, the earnings and accumulations of the society, and its profits from trade.

These are not accretions to donations, but they constitute, probably, nine-tenths ($\frac{9}{10}$) of its wealth.

Take an applicant's ancestor who withdrew in 1820 or thereabouts. How would you now define his share?

Then there were, say, 300 members. Now, eleven. There have been one thousand members since. Into how many shares divide it?

What will you do with all members joining since?

What with the heirs of each?

What property will you divide?

Certainly not the property afterward contributed or earned by new members.

What equity could the withdrawing one have to that?

The proper solution is the one Judges Greer and Irwin reached, that the members who at the time comprise the society *own all its property.* They always and at all times have exercised such ownership. In 1832, in the Count De Leon conspiracy, they actually gave to the Count and his following large parcels of land and a large amount of money. They have constantly sold and given away and otherwise used the property. To hold that the descendants of deceased ancestors are part owners in the property is to go in the face of all the agreements and to disregard the expressed provisions quoted from the agreements of 1805, 1827 and 1836.

See Judge Greer's and Judge Irwin's opinions in Nachtrieb vs. Harmony Society, cited *supra.*

Also, opinion of the Supreme Court of U. S. in Goesele vs. Bimeler et al., 14 *Howard*, 609.

Also, opinion of McKenna, J., in Speidel vs. Henrici, cited *supra.*

THE ARGUMENTS MADE AND AUTHORITIES CITED BY THE APPELLANTS BEFORE THE MASTER AND IN THE COURT BELOW BEARING ON THE QUESTION OF THE TITLE THE HARMONY SOCIETY HAS TO ITS PROPERTY.

We have considered and commented upon the complete manner in which the agreements of the society answer the averments of the appellants, that the society's title is only a base fee—or resulting trust—or that the society could not take title to property—or that the title taken offends the rule as to perpetutes. But in immediate connection therewith we desire to print a portion of the Master's report bearing on these questions. It refers to all the authorities, and is a complete refutation of the appellant's views.

Is the Property of the Society Held on Any Trust.

The plaintiffs, in the sixth paragraph of their bill, aver that the money and real estate from those who became members of the society were received and accepted by George Rapp and his successors in trust, and for the furtherance of the tenets and beliefs upon which the society was founded. This last clause is denied by the defendants in the sixth paragraph of their answer, but it is there admitted that all the goods and properties placed in the names of the agents and trustees of the society were, and are, held in trust for the Harmony Society, but always subject to the terms of the written contracts between the members of the said society. But in the twenty-sixth paragraph of the bill the plaintiffs deny that the property of the society has ever been impressed

with a trust, as being contrary to public policy and void in law or equity.

It is difficult to determine from these contradictory averments of the plaintiffs what their position on the question is. There is no other evidence in the case to show how the property was or is held than the agreements of the members in evidence hereinbefore set forth, and the subsequent agreements of April 30th, 1890, and December, 1892, also in evidence,—in which the former agreements are affirmed and continued,—and the testimony of all the witnesses who testified on the subject, that all the property was held by the trustees in trust for the society as joint property.

Claims of the Appellants.

The counsel for the plaintiffs, however, claim, in their argument that the grants in the agreements of 1805 and 1827, if they were to the society were to an unincorporated association, which was incapable of taking, and therefore void; that if George Rapp be considered a trustee they were still void, for the reason that a grant to a trustee of an unincorporated voluntary association is void, and that they violate the rule against perpetuities; and also for the further reason that the associates of George Rapp were not named and could not be ascertained.

The first article of the agreement of 1805 is as follows:

> "We, the subscribers, on our part and on the part of our heirs and descendants, deliver up, renounce and remit all our estate and property, consisting of cash, land and chattels, or whatever it may be, to George Rapp and his associates in Harmony, Butler County, Pennsylvania, as a free gift or donation, for the benefit and use of the community there, and bind ourselves on our part as well as on the

part of our heirs and descendants, to make free renunciation thereof, and to leave the same at the disposal of the superintendents of the community as if we never had nor possessed it."

And the first paragraph of the agreement of 1827 is as follows:

"We, the undersigned, for ourselves, our heirs, executors and administrators, do hereby give, grant and forever convey to the said George Rapp and his associates, and their heirs and assigns, all our property, real, personal and mixed, whether it be lands and tenements, goods and chattels, money or debts due to us, jointly or severally, in possession, remainder, or in reversion or expectancy, whatsoever and wheresoever, without evasion, qualification or reserve, as a free gift or donation for the benefit and use of said association or community; and we do bind ourselves, our heirs, executors and administrators to do all such acts as may be necessary to vest a perfect title to the same in the said association, and to place the said property at the full disposal of the superintendents of said community without delay."

Uncertainty of Grantees.

The objection that the associates of George Rapp were not named or known, is not good. He is named and known, and capable of taking and holding the title, either for himself or in trust.

The agreement itself shows that by "his associates" those who joined in the agreement were intended; and although, through the loss of the agreement, their names are not now known, they were known at the time of its execution, and for many years after.

Who the associates were, and that they were the persons who, by joining in the agreements, became associates of

George Rapp and members of the society, is shown by Exhibit No. 86, being the deed from Frederick Rapp for himself as attorney in fact of George Rapp and his associates to Abraham Ziegler, of Lehigh County, for the lands of the society in Butler county. This deed was offered in evidence by the defendants, for the purpose of showing who the members of the society were, and as part of its history. (See testimony, Record vol. III, 543 and 577). The parties to this deed are stated in it, as follows:

> "This indenture, made the sixth day of May, in the year of our Lord one thousand eight hundred and fifteen, between Frederick Rapp, of Harmony, County of Butler, and Commonwealth of Pennsylvania, for himself and as agent and attorney in fact for George Rapp and associates, of Harmony aforesaid, for the purpose specially constituted and appointed by letters of attorney bearing date on the fourteenth day of June, in the year of our Lord one thousand eight hundred and fourteen, duly signed, sealed and acknowledged by the said George Rapp and Christina, his wife, Rosina Rapp, Johanna Rapp, John L. Baker, William Liller"—and four hundred and fourteen others, naming them—"*being the associates of the said George Rapp above mentioned*, of the first part, and Abraham Zeigler, of Lehigh county, in the Commonwealth aforesaid, of the second part, witnesseth," &c.

Among those named in this deed as associates of Rapp and signers of the power of attorney, appear the names of several of those persons through whom some of the plaintiffs claim.

Rule as to Perpetuities.

The objection that these grants violate the rule as to perpetuities is also unfounded. A perpetuity is defined by Swayne, Justice, in Auld vs. Washington Hospital, 95 *U. S. R.*, 312, as

> "A limitation of property which renders it inalienable beyond the period allowed by law. That period is a life or lives in being and twenty-one years more, with a fraction of a year added for the term of gestation in posthumous births."

And in *Perry on Trusts*, sec. 377, it is said:

> "A perpetuity is a future limitation, whether executory, or by way of remainder, and of either real or personal property, which is not to vest until after the expiration of, or will not vest within the period prescribed by law for the creation of future estates and interests, and which is not destructible by the persons for the time being entitled to the property subject to the future limitations, except with the concurrence of the individual interested in that limitation. If such person is not yet in being, as he may not be after an extended period, of course the estate cannot be conveyed, even if all the world should join in the deed."

There is nothing in these grants to create a perpetuity. They are absolute grants, in fee simple, to take effect immediately, for the use and benefit of the association generally, not for any particular purpose, but for any use they may see fit to make of it. There is no future estate sought to be created or limited, and no provision restraining alienation. It is true the property may be held indefinitely by the trustees or the society, as any property held in fee simple; but if it should be to the interest or advantage of the society to part with it, there is nothing in these grants to prevent the conveyance or that would require that any third party should consent to, or join in, the deed.

In Geosele vs. Bimler, 14 *Howard*, 590, the court had under consideration the articles of association of the Separatist Society of Zoar, which were similar to the agreements in this case. In delivering the opinion of the court, McLean, J., on page 608, says:

> "Do the articles constitute a perpetuity? We all think they do not. They provide for the continuance of the society for an indefinite period of time, in the exercise of the discretion of the members. The majority of the members may require a sale of the property and break up the association. In fact the majority governs by the election of its officers. Members may be expelled from the society and new ones admitted under established rules. Whilst the society has the means of perpetuating its existence, it may be said to depend for its continuance on the will of a majority of its members."

WAS THE SOCIETY INCAPABLE OF TAKING AS GRANTEE?

The other claim of the plaintiffs is, that if the grants were directly to the society, they were to an unincorporated association, incapable of taking, and therefore void; and if they went to Rapp in trust for the society, they were equally void, for the same reason.

These grants are of both personal and real property, and there can be no doubt that unincorporated societies or associations are capable of taking, directly, and holding personal property in the name of the association. It is done every day, and their right is not questioned. The rule applies only to real estate. All the cases cited by the plaintiffs to show that a grant to an unincorporated society is void, are cases of grants of land or rights in land only, made directly to an unincorporated body; not to trustees for it.

Voluntary associations may be *cestuis que* trust of personal property.

Perry on Trusts, sec. 63.

But although a voluntary, unincorporated association cannot take title to real property in their society name, as they are not in law recognized as persons, it may be held for their

use and benefit by trustees, and their right to the enjoyment of the property be secured in that way.

Liggett vs. Ludd, 19 *Oregon*, 89.

Second Congregational Society vs. Waring, 24 *Pick.*, 304.

Theological Seminary vs. Childs, 4 *Paige*, 423.

Byam vs. Beckford, 140 *Mass.*, 31.

Crawford vs. Gross, 140 *Pa. St.*, 297.

In Second Congregational Society vs. Waring, 24 *Pick.*, 304, one Packard had conveyed certain land to himself, Haward, and twenty-five others, "who have associated together and have entered into a contract as proprietors for the purpose of building and erecting on said lot a meeting-house for public worship," "to have and to hold said lot to said proprietors and their heirs and assigns, and to each and every person who may hereafter become the lawful owner and proprietor of a pew in said house to be built and erected thereon, and which may and shall be afterwards rebuilt thereon by said proprietors and their successors, to the use and behoof of said proprietors for said purpose, and of each and every lawful owner and proprietor of a pew or pews in the meeting-house to be built and rebuilt on said lot forever."

In their opinion, the court say :

> "We are all satisfied that the deed of the *locus in quo* from Packard to Haward and others operated to convey the premises to them for the use of the proprietors therein named and of each and every lawful owner and proprietor of a pew or pews in the meeting-house to be built and rebuilt on said lot forever. It is no valid objection that the use was shifting. The grantees, who were capable to take, did take, upon the execution of the deed to them, and the use would legally shift to those who should afterwards become pew-holders. Multon's case Moor, 96, *Pl.* 240 : Where A makes a feoffment to B to

> the use of B and his wife that shall be, and B afterwards marries; there the use vested in B, at first, but upon the marriage shifted to himself and wife."
>
> "It is no valid objection that the limitation of the use was to depend upon the contingency, that the *cestue que use* should become a pew-holder. When that event happened the use shifted to him and others who held the estate before; and those who so held pews were tenants in common. *Sanders on Uses*, 131."

The following cases, cited by the plaintiffs, do not support their position:

In Sanderson vs. White, 18 *Pickering*, 328, the question was as to who were visitors of a charitable trust created by will.

Hemlock vs. Westbrook, 9 *Johnson*, 73, was an action of trespass for cutting wood. The defense was a proviso in plaintiff's deed, "that the inhabitants of Rochester should be allowed to cut and carry away wood." The court held that as the inhabitants of Rochester were not incorporated, and incompetent to take an estate by that name, the reservation to them in a deed to a third person was void.

Jackson vs. Corry, 8 *Johnson*, 385, was an ejectment in which the defendants claimed under a deed to "the people of the county of Otsego." The court said, "The people of the county of Otsego had not a capacity to take by grant. They were not a corporate body known in the law. * * * ." A grant, to be valid, must be to a corporation or some person certain must be named who can take by force of the grant, and can hold either in his own name *or as trustee.*

Perkins, sec. 55, 2 *Johns. Cases*, 324.

In Sloane vs. McConaghy, 4 *Ohio R.*, 157, it was held that a bond to the commissioners of the county, no commissioners being elected when it was made, was void.

Briggs vs. Mansfield, 10 *Pick.*, 363, was a claim of a right of pasturage, in which it was held that a grant of right of common to the inhabitants for the time being (not incorporated) of a certain territory conveyed no right to persons not inhabitants at the time of the grant.

German Land Association vs. Scholler, 4 *Minn.*, 331, does not decide that lands could not be held in trust for an unincorporated association, but only that the declaration of the trust in that case was too vague and indefinite under the Minnesota act in relation to trusts, and was therefore void.

It was a complaint to compel the execution of a deed. Defendant being the equitable owner of lands, the legal title to which was in the United States, executed a conveyance of the land to Albert Tofel and others named, who were trustees of the association, in trust for the German Land Association (which was not incorporated) and for the several use and benefit of the several members thereof according to their respective interests as the same might thereafter be determined by division or otherwise. Defendant had afterwards obtained the legal title and refused to convey.

It was a proceeding to compel a third party to carry a trust into execution, or rather, to create a trust, not to declare void and set aside a trust that had been recognized, in operation, and acted upon, for many years.

In its opinion, the court say:

> "One question in the case is whether the beneficiaries are sufficiently described to enable the court to execute the trust. Irrespective of the provisions of our statutes, it would seem that the trust could not be sustained. Courts of equity carry trusts into effect only when they are of a certain and definite character. If, therefore, a trust is clearly created in

a party, but the terms by which it is created are so vague and indefinite that the courts of equity cannot clearly ascertain the objects or the persons who are to take them, the trust will be held entirely to fail. 2 *Story, Eq. Juris.*, 969 a; Wheeler vs. Smith, 9 How., *U. S. R.*, 55."

"In declaration of uses certainty was required, and that especially in three things: in the persons to whom, in the lands, etc., of which, and in the estates by which the uses were declared; and if there was a want of certainty in either of these, the declaration was not good, and a trust is now merely what a use was before the statute of uses."

"Our statutory provision removes any doubt that might otherwise be supposed to exist. In the creation of a trust of this character, it is required that the trust shall be fully expressed and clearly defined on the face of the instrument creating it." * * *

"The German Land Association was not by law invested with any legal existence, and the trust deed gives no intimation as to who the persons were associated under that name. The deed was therefore void."

In the present case, the objects of the trust are set forth in the agreements, and the beneficiary is the community or society formed by the agreement, and composed of the persons joining in and signing the agreement. The conclusion of the agreement of 1827 is, "In witness whereof and in testimony that the undersigned have become members of the said community upon the conditions aforesaid they have hereunto set their hands and seals." This trust would, therefore, be valid under the above decision, as all that is required, in the opinion, is shown in the agreement creating the trust.

Position of Appellants if Good Would Defeat Their Claim for Relief.

But if the agreements of 1805, 1827 and 1847 were void as creating a perpetuity, or on account of the grantees being in-

competent to take—being Rapp and his associates, the associates being unknown; or on account of the association being unincorporated and therefore incompetent to take; or on account of the trust sought to be created by the deed being void as in favor of an unincorporated society incompetent to take, and for that reason no title to the property sought to be conveyed passed to the grantees—or the property reverted to their grantors or their heirs—then the plaintiffs can have no claim to it at this time. If the grants are void now, they were void at the time they were made, and the title of the property and the right to its possession either remained in the grantors or immediately reverted to them, and their right of action occurred for the recovery of it. But the last of these agreements was signed by the ancestors of the plaintiffs more than fifty years ago, and if any property was contributed by them, it was contributed at that time, and possession then taken and since held by the trustees or the society as the joint property of the society, that is, adversely to the plaintiffs; and, under the decision of Spiedel vs. Henrici, 120 *U. S. R.*, 377, the plaintiffs and their ancestors have, through their laches and the lapse of time, lost all rights or interest they might have had in the property, on these grounds. The question whether the grants and the trust were valid or not, therefore, is immaterial in this case. If the plaintiffs have any interest in the property of the society, it can only be through these agreements and the trust thereby created.

But again, it is alleged in the second paragraph of the bill that the three thousand acres of land of the society, at Economy, Beaver County, were *purchased* by it in 1825; and it appears, from the evidence, that the lands at Beaver Falls were also *purchased*. None of the deeds for any of the lands held by the society were in evidence, nor was it shown from whom any of it was purchased; but it was shown that the

legal title of all the lands acquired by the association since its organization was held, during the life of George Rapp, either by him, or by Frederick Rapp, in trust for the society; and after his death, by the several trustees upon the same trust. If these lands had been conveyed to the society by any of the ancestors of the plaintiffs, or by any other member of the society, it is to be presumed that the plaintiffs would have shown that fact as a part of their case, to entitle them to the reversion or resulting trust claimed by them. The burden was on them. It is to be presumed that the deeds are on record, or at least there must be some evidence of title in the trustees which might have been produced. Not having shown, or attempted to show, that the title of these lands was derived from any of the persons through whom the plaintiffs claim, or from any other member of the society, and it appearing that they had been purchased, it must be concluded that they were purchased from some person, not a member of the society. If this is the case, and it was conveyed to George Rapp, or Frederick Rapp, in trust for the society, and that trust was void for the reasons alleged by the plaintiffs, how are they entitled to any interest in it? If the trust was void, either the title would not pass out of the grantors, or it would go to the grantee, clear of the trust. The claim that the trust was void proves too much for the plaintiff's case. If they have any interest in property purchased with money of the society, it can only be through the trust—not in opposition to it.

Is the Estate Created a Base Fee or Resulting Trust.

The plaintiffs claim that upon the dissolution of the society the purposes for which the property was contributed to the association have entirely ceased and failed, and the property must revert to the grantors or their heirs, on the ground that

the grants of the property contained in the agreements created a limited or base fee, only, in the property, or a resulting trust to the grantors or their heirs.

The grants are contained in the agreements of 1805 and 1827, which are substantially the same, and are agreements for the formation of an association or community; the only difference being that the agreement of 1827 is more fully expressed. The granting clause is contained in the first article, and, as translated from the original German by Mr. Fleischman—who was agreed upon by the parties for that purpose—is as follows:

> "ARTICLE 1. We, the undersigned, for ourselves, our heirs, executors and administrators, do hereby give, grant and forever convey to the said George Rapp and his associates and to their heirs and assigns all our property real personal and mixed, whether it be lands and tenements, goods and chattels, money or investments due to us, jointly and severally, in possession or in remainder, or in expectancy, whatsoever and wheresoever without exception, evasion or reserve, as a free gift of donation for the benefit and use of said association or community, and we do hereby bind ourselves, our heirs, executors and administrators to do and perform all that may be necessary to vest a perfect right and title to the same in the said association, and to place the said property at the full disposal of the superintendent of the said community without delay."

In the second and third articles the subscribers covenant and agree that they and their families will labor for the benefit of the community, and will make no claims for compensation for the same.

This does not create a limited or a base fee. The property is not granted for any particular purpose, or to be used in any specified manner, or for any special object, but generally "for the benefit and use of the said association or com-

munity, and is to be placed at the *full disposal* of the superintendent of the community." In the agreement of 1805 it is written: "and to leave the same at the disposal of the superintendents of the community, as if we never had nor possessed it." This is said of personal as well as real estate; o money as well as lands; of property that would necessarily be destroyed or parted with in any use made of it, as well as rea estate, and the terms used are applied to both. There is no restriction on the use of either, but both are to be at the full disposal of the superintendent. This would include the power of sale. It could be used in any manner that would be beneficial to the society. If it would be to the advantage of the community to sell it, it might be sold.

Wherever words in a conveyance are relied upon as creating a condition subsequent, so as to create a base or determinable fee, they must not only be such as would of themselves create a condition, but must be so connected with the grant as to qualify or restrain it. To make the estate conditional the words must clearly show such intent.

Methodist Church vs. Old Columbia Ground, 103 *Pa. St.*, 608.

A conveyance reciting that the property is to be used for a certain purpose, without more, does not create a condition or base fee.

Wilkesbarre vs. Wyoming Society, 134 *Pa. St.*, 616.
Harris vs. Shaw, 13 *Ill.*, 456.
Cook vs. Trimble, 9 *Watts*, 15.
Kerlin vs. Campbell, 15 *Pa.*, 500.
Seebold vs. Shitler, 34 *Pa.*, 133.
Seller's Church Petition, 139 *Pa. St.*, 61.

The plaintiffs, in support of their position that a conditional or base fee was created in this case, have cited the following cases, viz: Scheetz vs. Fitzwater, 5 *Pa. St.*, 126; Kirk vs. King, 3 *Pa. St.*, 436: Vail vs. Long Island, 106 *N. Y.*, 283; Adams vs. Logan County, 11 *Ill.*, 336; Universalist Society vs. Boland, 155 *Mass.*, 171; Church vs. Manning, 72 *Md.*, 116; Easterbrook vs. Tillinghast, 5 *Gray*, 17; Board vs. Edson, 18 *Ohio*, 226; Gebhart vs. Reeves, 75 *Ill.*, 301; Reed vs. Stauffer, 56 *Md.*, 226; Carmack vs. Edwards, 13 *Reports Chy*, 334; Hopkins vs. Grimshaw, and Slegel vs. Lauer, 147 *Pa.*, 236.

In all these cases except Slegel vs. Lauer the limitation of the estate was clearly expressed, showing the intention to convey a base or qualified fee only, and that upon the termination of the specified, particular use, the property should return to the grantor. The property was conveyed for a specified purpose and for *no other use*, or *for no other use whatever*, or was granted *for so long as used* for the purpose specified, or to be *used solely* for the specified purpose.

In Carmack vs. Edwards, 13 *Reports Chy.*, 334, much relied on by the plaintiffs, a society was formed for the purpose of raising, by subscription of members and by fines and forfeitures, a fund for the relief of deceased members of the society. Rules were adopted, providing for the management of the society. Rule 16 provided that the money arising from the subscriptions, fines, forfeitures and otherwise, should be invested by trustees in the manner therein provided. Rule 35 provided for the payment of annuities to widows of deceased members. Rule 45 provided that all fines and forfeitures should form part of the funds, and should be *applied solely* for the purpose provided by the rules, and towards defraying the expenses of the management of the

society. The last surviving, ordinary member, T. H. Edwards, died in 1878; the last person entitled to an annuity died in 1892. The fund then belonging to the society was 1,246 pounds sterling. This was claimed by the crown as *bona vacantia*, by the representatives of Edwards as last surviving member, by S. Clark for the representative of the other members of the society.

Chitty, J., in his opinion, says:

> "When a man provides a fund by way of a trust for the payment of a specified annuity to his widow during her life, and makes no further declaration of trust affecting the fund, the beneficial interest in the fund, or so much of it as is not required for the payment of the annuity, results to himself. The same doctrine would apply to several persons agreeing to provide such annuities for their widows; there would be an ultimate trust in their favor when the purposes of the fund had come to an end. Nor can I see how any difference could justly be made by reason of their raising by common agreement such a fund in different but prescribed proportions among themselves."

And he held that the doctrine of resulting trust applied, and that the fund should be distributed among the representatives of the ordinary members in proportion to the amounts contributed by each member to the funds of the society.

In Slegel vs. Lauer, 148 *Pa. St.*, 236, a strip of land adjoining a county jail was conveyed to the county, reserving to the grantor and his heirs the free use of the property for an open yard or garden—habendum "to and the use, interest and purpose following, that is to say, to be and remain forever hereafter unbuilt on in order to prevent any prisoner or prisoners making their escape over the said prison walls by reason or means of any building erected contiguous to said

walls." The jail had been removed to another place. The court, in the opinion, says:

> "In view of all the circumstances, there seems to arise from the express declaration of purpose a necessary implication of the exclusion of every other. It is a rule in the construction of a statute, pleading, contract, or will, or other instrument, that what is clearly implied is as much a part of it as what is expressed. U. S. vs. Babitt, 1 *Black*, 61, Hanchett vs. Weber, 17 *Ill.*, App., 114. The instrument under consideration is therefore to be treated precisely as if it contained a declaration that the grant was for the purpose mentioned *and no other*. But when an estate is conveyed in fee for a specified purpose 'and no other,' the fee is a base fee, determinable upon the cessation of the use of the property for that purpose. Kirk vs. King, 3 *Pa. St.*, 436. Scheetz vs. Pittswater, 5 *Pa. St.*, 126."

Nor is there any resulting trust created by the grants:

> "If a conveyance has been made upon a valuable consideration, there can be no resulting trust to the grantor, as the payment of a valuable consideration imports an intention to benefit the grantee in case the trust declared fail, or are imperfectly declared, or do not take effect for any other reason."
>
> *Perry on Trusts*, sec. 151.

Although these grants and covenants are called, in the agreements, gifts or donations, they are not without a consideration and a very valuable one. In consideration of them, the donors become members of the community, thus partaking in the benefits derived from the property contributed, and they and their families are to be supported and provided for by the community during life, if they so long remain in it, as well during sickness or inability to labor as in health; or if they die or leave the society, leaving a family, it is to be supported and cared for as long as it remains in the community.

The fourth and fifth articles set forth the considerations to be received by the donors, and are as follows:

> "ARTICLE 4. In consideration of these presents the said George Rapp and his associates do by these presents receive the undersigned jointly and severally as members of this community, whereby each of them is entitled to attend all religious meetings, and to receive not only for themselves, but also for their children and families, all such instruction as may be required for their temporal good and their eternal welfare."
>
> "ARTICLE 5. The said George Rapp and *this community* further promise each of the undersigned and their families to provide them with all the necessaries of life, as clothing, food, drink and lodging, &c., for themselves and their families. And this promise is not limited to their days of health and strength, but when any of them shall become sick, infirm or otherwise unfit for labor, the same support and maintenance shall be provided as before, together with such medicines, aid, care and attendance and consolation as their condition may reasonably require. And if at any time after they have become members of the association, the father or mother of a family should die, or should otherwise be separated from the community, leaving their family behind, such a family shall not be left as orphans nor destitute, but shall be entitled to the same rights and maintenance as before, as long as they remain in the association, in sickness as in health, and to such extent as their circumstances may require."

It is not alleged by the plaintiffs in their bill, or at the hearing, that the community had ever failed to fulfill its part of the contract towards any of their ancestors or persons through whom they claim, and it must, therefore, be taken for granted that it has not failed to do so, and that the parties through whom the plaintiffs claim have received the whole of the consideration contracted for in the agreements. And

the plaintiffs can have no equitable or other claim to have a resulting trust in the property contributed.

> "There could be no resulting trust, for every part and parcel of the grantor's estate, legal and equitable, present or prospective, had passed from him and *was paid for.* Nor was the estate granted a base fee. It was unincumbered with conditions or limitations. The ancestor received a full consideration for it, and the plaintiffs cannot rescind the bargain."
>
> Kerlin vs. Campbell, 15 *Pa.*, 500.

The grant in the present case, in the agreement of 1805, is, "As if we never had nor possessed it;" and in the agreement of 1827, "All our property, real, personal and mixed, * * without evasion, qualification or reserve, * * and to place the said property at the full disposal of the superintendents of said community without delay."

It is evident from these expressions that there was no intention to create a base fee or a resulting trust. And deeds are to be construed most strongly against the grantor.

But in this case there is another reason why there can be no resulting trust or reversion in the plaintiffs. The ancestors of the plaintiffs never contributed any property to the society or to Rapp, in trust for it; and for their labor they received the consideration agreed upon and released all further claim on account of it. The plaintiffs can have no reversion or resulting trust in the property contributed by others than their ancestors. There is no such provision in the agreements.

NO ONE OF APPELLANTS HAS PART INTEREST IN PROPERTY OF THE SOCIETY.

We are now ready to consider the question, ante page.

Is either one of the plaintiffs a part owner in the property, real or personal, of the Harmony Society, and would he be, was the society dissolved, entitled to any part thereof?

The answer is—*he is not and he would not.*

No one of the plaintiffs *is* a member of the Harmony Society.

No one of the plaintiffs ever was a member of the Harmony Society.

No one of the plaintiffs is the executor or administrator of any deceased member of the society.

No one of the plaintiffs could obtain a decree compelling the society to admit him as a member to the enjoyment of the rights of the deceased ancestor.

The claim of each plaintiff is because he is of lineal or collateral descent the heir at law, or next of kin, of some one now dead, who, in his lifetime, was a member.

We have demonstrated—

(1) That no one of the members, even while the membership continued, had any title to any part of the property of the community. He had no such individual interest in or right to any of the property as enabled him to sell it, or transfer it to another, or take it to himself, or have partition

of it. His entire right was solely and only as a member of the community, and was personal to himself.

(2) His withdrawal or death, terminated all his rights as a member of the community, and hence ended all right on his part in any way to intermeddle with the property of the community.

This was distinctly ruled in Schriber vs. Rapp, 5 *Watts*, 358, and it will be noted that case arose prior to the agreement of 1836, and was ruled on the contracts of 1805 and 1827.

(3) Prior to the agreement of 1836, when one who had contributed property to the joint or common fund, withdrew from the society, he was entitled to the value of his contribution, without interest, payable in one, two or three years. This was a personal right to be enforced by him individually, and after his death by his executors or administrators—not by his heirs at law or next of kin.

No question on the right to recover any contribution arises in this case. There is no proof of such contribution by any of the ancestors of plaintiffs, and if there had been this bill is not founded on any such right, and if it was so founded the personal representatives, *i. e.*, executor or administrator, would be an indispensable party.

This bill is filed on the ground that the Harmony Society is now dissolved.

Not that it is in existence, and may be sued, but, that it has been dissolved.

The Agreement of 1827, as to a return of value of contributions, is from the society living and in existence to a withdrawn member.

It is not this case which asks for a distribution of property because of dissolution of society.

(4) Under the Agreement of 1836 the property of the society was declared to be

"joint and indivisible stock."

That is, it was joint which gave to the survivors the rights of all, and it was indivisible, because no one of all had the power to divide it.

This was a mere definition in accurate language of what the Agreement of 1805 and 1827 provided.

One and all denied to the individual a separate property right in any of the property of the society, and each limited the individual to his joint right to the common property with all the other members constituting the society, and recognized his individual right only in the covenants and agreements which provided him school and church and food, clothes, etc.

In one and all of them withdrawal, or death, terminated the membership, and left the departing one with no further interest in, or right in, the society, or its property.

The agreements all contain mutually dependent covenants. The joining member is to render obedience and labor, etc., and the society is to find clothes, etc. Evidently, if the member will not perform his covenant, he cannot ask the society to perform its covenants. And then his continued

presence in the society is necessary to enable the society to feed, clothe and house him. When he dies or withdraws it is no longer possible to do it.

The member's interest in the property was only as one of the joint community, and not as an individual. In the property he had no direct interest. By the agreement he expressly renounces all such interest. His sole claim to the property is because he was adopted a member of the society. When he ceases to be a member, whether by death or withdrawal, the right which arose wholly by reason of the membership, terminates and ceases, much in the same manner as if he was a citizen of a village, or a member of a church, and left the same.

Death, or withdrawal from the society, forever terminated and ended all the so-called property rights of the adopted one, and all his rights to call for the performance of the covenants in the agreements to give him food, clothing, sustentation, etc.; his descendants gain no property right whatever.

It will be noticed that all of the ancestors of the plaintiffs either

(1) Died while still members of the Harmony Society; or,

(2) Died after they withdrew from membership.

Now, the withdrawing was a voluntary act on their part, which cut them off from the society. One who died after he had withdrawn, and was still *in contumacium*, surely could

impart no more right or title or claim to the company's property than if he had remained in the society, and had not withdrawn, If he could, the parable is outdone, for the slothful servant in that received only an equal sum with him who had labored all the day, while, in the case suggested, he would receive much more.

Death, whether while still a member, or after withdrawal, forever settled the personal, individual claim and right of the deceased as a member of the society, and he has nothing—he leaves nothing he can transmit to his heirs.

PERSONAL RIGHT OF MEMBER NOT TRANSMISSIBLE.

In each of the agreements the language is more or less specific, but always clearly stating the same idea—that an individual had no personal right or claim which he could sell or give away, or, in the case of his death, transmit to any other person, as to any of the covenants of the agreement, or any of the rights which, as a member of the society, he had in or to the common property of the society.

Thus, in the agreement of 1805, all jointly, not only on their own part, but,

> "on the part of our heirs and descendants, deliver up, renounce and remit all our estate and property, * * to George Rapp and his associates, * * as a free gift or donation, for the benefit and use of the community, and bind ourselves on our part, as well as on the part of our heirs and descendants, to make free renunciation thereof, and to leave the same at

> the disposal of the superintendents of the community, as if we never had nor possessed it."

Thus, again, in case of withdrawal, all agreed—

> "never to demand any reward, either for ourselves or children or those belonging to us, for any of our labors or services rendered, but whatever we jointly and severally shall or may do, we will have all done as a voluntary service for our brethren."

Then again, in case of a withdrawal, George Rapp and his associates,

> "promise to refund him or them, the value of his or their property brought in without interest,"

in installments, or, if nothing was brought in, and he departs openly, a donation shall be given.

The refunding, or donation, is only in case of voluntary withdrawal, and then the amount refunded is the value of the original contribution, without interest. This is the individual contribution that the party withdrawing had made. He is given nothing out of the common fund contributed by others. He is refunded only the value of that which he originally put in. As we have seen, it was a personal claim, to be enforced by personal action, which, on his death, would go to his executors, or administrators, and would not descend to heirs at law. He might, under that agreement, sue the covenantors—Rapp and his associates—if they did not refund the value. This was his only right. He could not have filed a bill for the dissolution of the society and the partition of its property.

The agreement of 1827 made a joint and several covenant as follows :

> "We, the undersigned, for ourselves, our heirs, executors and administrators, do hereby give, grant and forever convey, to the said George Rapp and his

> associates, and their heirs and assigns, all our property, real, personal and mixed, * * * without evasion or qualification, or reserve, as a free gift or donation, for the benefit or use of the said association or community; and we do hereby bind ourselves, our heirs, executors and administrators to all such other acts as may be necessary to vest a perfect title to the same in the said association, and to place the said property at the full disposal of the superintendents of the said community without delay."

Then, in case of withdrawal, each and all covenant,

> "that we will never claim or demand, either for ourselves, our children, or for any one belonging to us, directly or indirectly, any compensation, wages or reward whatever for our or their labor or services rendered to the said community, or to any member thereof; but whatever we or our families jointly or severally shall or may do, all shall be held and considered as a voluntary service for our brethren."

Then Rapp and his associates again agree, in case of withdrawal,

> "to refund to him or them the value of such property, without interest, as he or they may have brought into the community."

payable in installments.

The agreement of 1836 reiterates and approves of the agreements of 1805 and 1827, except that portion of the agreement of 1805 and 1827 which promises to refund to withdrawing members the value of the property contributed. That portion of the agreement of 1827 was rescinded; the members of the society, among other things in this agreement of 1836, saying:

> "The said 6th article is entirely annulled and made void, as if it had never existed; all others remain in full force as heretofore."

Then follows a formal declaration in specific words of what was already in truth contained in the two previous agreements, such declaration being as follows:

> "All the property of the society, real, personal and mixed, in law or equity, and howsoever contributed or acquired shall be deemed, now and forever, joint and indivisible stock. Each individual is to be considered to have finally and irrevocably parted with all his former contributions, whether in lands, goods, money or labor; and the same rule shall apply to all future contributions whatever they may be."
>
> "Should any individual withdraw from the society, or depart this life, neither he, in the one case nor his representatives in the other, shall be entitled to demand an account of said contributions, whether in land, goods, money or labor, or to claim anything from the society as matter of right. But it shall be left altogether to the discretion of the superintendent, to decide whether any, and if any, what allowance shall be made to such member, or his representatives as a donation."

The Agreement of 1847 approves the Agreement of 1827, excepting Section 6th, and also the Agreement of 1836.

If plain words, carefully selected and properly placed, can make certain any one thing, it would seem that these agreements made certain the proposition that death, or withdrawal, and especially when the withdrawal was followed by death, terminated, and forever ended all the rights of the withdrawing or dead member, and as all these rights were personal, surely nothing could go to his heirs at law.

The authorities seem to be uniform in approving the above proposition, and this in whatever state and by whatever court the matter has been considered.

DECISIONS OF THE COURT THAT DEATH OR WITHDRAWAL TERMINATES ALL INTEREST OF THE WITHDRAWING OR DEAD MEMBER AND HIS HEIRS AT LAW ACQUIRE NO INTEREST WHATEVER.

The cases which have arisen by withdrawing members and others against the Harmony Society are as follows:

First comes the case of Schriber vs. Rapp, 5 *Watts*, 351, decided in 1836.

The Supreme Court of Pennsylvania, in Schriber vs. Rapp, considered the agreements of 1805, 1821 and 1827, only, as the case arose prior to the agreement of 1836, and is, therefore, specially significant of the reasoning hereinbefore urged, to wit, that the same result followed under the agreements of 1805 and 1827 as under the agreement of 1836.

In this case Peter Schriber, one of the members of the Harmony Society, died, and his administrator brought an action of account render against the society. It was proven that the decedent had contributed largely to the society, but the case was decided against his claim. The Common Pleas Court held, page 359:

> "The articles of association executed by the plaintiff's intestate *are a complete bar to the plaintiff's recovery in this case*, unless the plaintiff's intestate has had a fraud practiced upon him, and been induced to sign them by fraud and imposition."
>
> * * * * * *
>
> "There is nothing in the articles of association given in evidence that renders the agreement unlaw-

ful or void; nothing in them inconsistent with constitutional rights, moral precepts, *or public policy.*"

Gibson, Chief Justice, delivering the opinion, among other things said, in speaking of the Harmony Society, that it was not a partnership; and then, speaking and defining the rights of the members, he said:

> "At the period of initiation, the neophyte surrenders his worldly wealth to the society, reserving to himself but the contingent right of resumption in the event of his secession, * * It is supposed, however, that as the intestate had power, by the articles, to secede from the society and take out of it whatever he had brought into it, *the successor to his personal rights may exercise it as his representative. Such, however, are not the terms of the articles;* nor would a posthumous exercise of the power consist with the disposition he thought fit to make by dying in fellowship. An exercise of it by the administrator of one dead without kindred would wrest the property from the society, only to give it to the State by escheat. The right of secession, therefore, *is intransmissible;* and were it not, the intestate's release would be a bar."

Nachtrieb vs. Harmony Society, 3 *Wallace, Jr.*, 66, was decided by the Circuit Court of the United States in 1852, having been brought to No. 28 Nov. Term, 1849, in Equity.

That was a bill in equity, in which Nachtrieb alleged he had been a member of and worked for the society from 1819 to 1846, when he had been unlawfully expelled from the society, and prayed for an account of the sums due him for labor and of his share of the property of the association.

The Circuit Court—Grier and Irwin, Justices—held that Nachtrieb was *unlawfully expelled*, and he was therefore entitled to his full share of all the property the society owned. The members being then 321, his share was the 1-321.

Grier, J., in his opinion, 3 *Wallace, Jr.*, 82, held that

> "each member had an equal right to and interest in their common property, and (each) had estopped himself *from even setting up any claim for property* or labor contributed to the common stock in case of a voluntary withdrawal from the society."

In a concurring opinion, filed February 8th, 1852, Irwin, J., elaborately examines the different agreements, and arrives at the conclusion that the common property of the society belonging to the society, and if at any time it was dissolved it would be divided *among those who are the members when such dissolution occurred.* That these members could dissolve it and divide the property, and no one else except members could share in the division. That the unlawful expulsion by the society of Nachtrieb entitled him to his share of the common property.

The case was appealed to the Supreme Court of the United States, and is reported as Baker et al, Trustees, vs. Nachtrieb, 19 *Howard*, 126, and was decided in 1856.

The court below was reversed (without a dissent from Grier, J.), on the point that the receipt Nachtrieb signed when he left the society

> "must be treated as the contract of dissolution between the plaintiff and the society of their mutual obligations and engagements to each other."

So treated, the bill in equity was not properly framed to attack it for fraud, and hence, it was conclusive that Nachtrieb had no claim against the society.

It will be noticed that the receipt was as follows:

> "To-day I have withdrawn myself from the Harmony Sociery and ceased to be a member thereof; I

have also received of George Rapp two hundred dollars as a donation agreeably to contract."

This Nachtrieb case as ruled in the Circuit and Supreme Court, is full to the proposition that by a voluntary withdrawal, the one so withdrawing lost all his claim or rights of, in, to, or out of the common property of the society.

The case of Lemmix vs. Harmony Society, No. 2, November term, 1852, of the Circuit Court of the United States for the Western District of Pennsylvania, in equity, was a bill filed June 10, 1852, alleging an unlawful expulsion, and praying for an account as in the Nachtrieb case. Issue was joined, testimony taken, and on February 3, 1855, Judge Irwin filed an opinion dismissing the bill on the ground that the plaintiff had failed to show an unlawful expulsion.

Though a bond was filed for an appeal to the Supreme Court of the United States, it does not seem it was prosecuted.

This case is direct authority to the effect that the society may expel a member, and when properly expelled, all his rights to the common property of the society cease and determine.

The next case was that of Speidel vs. Henrici, *et al.*, reported 120 *U. S. Reports*, 377.

The bill in equity was filed June 7, 1882, by Speidel, who alleged that he was at one time a member of the society, but left it in 1831 to be married.

The bill alleged fraud practiced by Rapp and his society against Speidel and other members; that the system of the society was contrary to the laws of the land, and against public policy; that the property of the society was held in

trust by Henrici and Lenz, and was of great value, and the prayer was,

> "that said trust be rescinded and held for naught as resting upon fraud and iniquity, and being contrary to public policy and the laws of the land,"

that an account of the trust estate be taken, and a distribution thereof made.

The defendants demurred on the following grounds

(1) Statute of Limitations.

(2) Stale claim, which equity could not aid.

(3) Case stated in the bill not entitled to relief in equity.

The Circuit Court, McKennan, J., sustained the demurrer on the second ground. An elaborate opinion, which is not printed, but to which we ask attention, was filed, and, amongst other things, Judge McKennan held:

> "The trust alleged here was instituted for the *equal and exclusive benefit of the members of the Harmony Society.* It was part of the religious, as well as secular, policy of the society. *Fellowship in the society was the only recognized title to participation in its benefits. When that fellowship ceased from whatever cause, all further interest in the trust and all the privileges of membership were necessarily lost and were denied.*"

In the Supreme Court Mr. Justice Gray delivered the opinion to which there was no dissent, sustaining the decree in the court below, and, among other things, that opinion says:

> "The trust on which Rapp, and the defendants as his successors, held the common fund of the Harmony Society, is described in one place in the bill as 'for the members of said families and the contributors of said fund and for their common benefit,' that is to say, as is clearly explained by what goes

before, in trust for their common benefit as a community, living together in the community, working for the community, subject to the regulations of the community, and supported by the community. This was the 'said trust,' which, as the bill afterwards alleges, Rapp, up to his death, and his successors, until the bringing of this suit, 'always recognized and acknowledged.' The constant avowal of the trustees that they held the trust fund upon such a trust is wholly inconsistent with and adverse to the claim of the plaintiff that they held the fund in trust for the benefit of the same persons as individuals, though withdrawn from the community, living by themselves, and taking no part in its work."

"The plaintiff, upon his own showing, withdrew from the community in 1831, and never returned to it, and, for more than fifty years, took no step to demand an account of the trustees, or to follow up the rights which he claimed in this bill.

"If he ever had any rights, he could not assert them after such a delay; not on the ground of an express and lawful trust, because the express trust stated in the bill, and constantly avowed by the trustees during this long period, was wholly inconsistent with any trust which would sustain his claim; not on the ground that the express trust stated in the bill was unlawful and void, and therefore the trustees held the trust fund for the benefit of all contributors in proportion to the amounts of their contributions, because that would be an implied or resulting trust, and barred by lapse of time. In any aspect of the case, therefore, if it was not strictly within the statute of limitations, yet the plaintiff showed so little vigilance and so great *laches* that the Circuit Court rightly held that he was not entitled to relief in equity."

In Goesele and others against Bimeler and others, 14 Howard, 590, the Supreme Court of the United States had under consideration the agreements on which the society at Zoar, Ohio, was founded, and, in many respects, such agreements resemble those we have hereinbefore considered. It was there held, by the unanimous opinion of the Court, that on the death of a member, his individual connection with the

society ceased, and that, as he had no individual ownership, nothing was transmitted to his heirs, and the plaintiffs in that case, who were the heirs at law of one of the deceased members, were held to have no title whatever to maintain the bill.

Judge McLean, in delivering the opinion *inter alia*, said:

> "All individual right of property became merged in the general rights of the association. *He had no individual right and could transmit none to his heirs.* It is strange that the complainants should ask a partition through their ancestors when by the terms of his contract, he could have no divisible interest. They who now enjoy the property, enjoy it under his express contract. * * Land and other property were to be acquired by the members, but they were not to be vested with the fee of the land. While they remained in the society, under its general regulations, the products of their labor on the land and otherwise were applied, so far as necessary, to their support. Beyond this, they were to have no interest in the land, or in the personal property. * * * *But from the nature of the association and the object to be attained, it is clear the individual members could have no rights to the property, except its use, under the restrictions imposed by the articles. The whole policy of* the association was founded on a principle which *excluded individual ownership.* Such an ownership would defeat the great object in view, by necessarily giving to the association a temporary character. If the interests of its members could be transferred or pass by descent, the maintenance of the community would be impossible. In the natural course of things the ownership of the property in the few years, by transfer and descent, would pass out of the community into the hands of strangers, and thereby defeat the object in view. * * If members separate themselves from the society their interest in the property ceases. * * *"

In the Court of Appeals, in the state of New York, in the case of Burt vs. Oneida Community, 137 *New York Reports*, 346, they considered the articles of association on which the

Oneida Community was organized, many of the provisions of which are substantially the same as those in reference to the Harmony Society.

In that case Burt, one of the members, was expelled, and he filed a bill asking to be reinstated, but the court held that the community had the right to expel a member, and that expulsion terminated his personal connection with the society, and all his rights to the use or enjoyment of the property of the society. After reviewing in general, on pages 353 and 354 of the opinion, the contents of the agreement, the court summed up by saying:

> "These were the main features of the organization to which the plaintiff voluntarily became a party. It is not shown or found that he was induced to enroll himself among its members by any fraud or duress, and, viewing it solely as a business undertaking, it was not prohibited by any statute or in contravention of any law regulating the possession, ownership or tenure of property. It imposed no unlawful restraint upon the alienation of property, for the title to its real estate could be conveyed at any time by the united action of the members if they so willed it. *It was a joint holding of property by the adult members of the community with this qualification, that upon the death or withdrawal of a member no share or interest therein passed to him or his personal representatives, but they who survived or remained continued to hold jointly the entire property in solidum.*"

Goesele vs. Bimeler, 14 *How., U. S. Rep.*, 589.

Same case, 5 *McLean*, 223.

Gasely vs. Separatists Soc., 13 *Ohio St. R.*, 144.

Waite vs. Merrill, 4 *Maine*, 102.

Schriber vs. Rapp, 5 *Watts*, 351.

Gass vs. Wilhite, 2 *Dana, Ky.*, 170.

In the report of this case in 5 *McLean*, 230, where McLean sat as Circuit Judge, he said, in delivering the opinion of the court:

> "Individuality of ownership of the property then possessed by the members of the association was abolished, and also future acquisitions, for the common right of an interest in the whole. This common right was limited to the members of the association; *consequently those who left it, or were expelled, forfeited such right.*"

The Supreme Court of Maine, in the case of Waite vs. Merrill et al., 4 *Maine*, 90, considered the agreements under which the Shaker Society of the town of New Gloucester was organized, the provisions of which agreements, in many respects, are similar to those of the Harmony Society.

The court held, in an unanimous opinion, that the agreements were legal and valid, and that the plaintiff who had brought action to recover compensation for his services to the society while he was a member thereof could not recover.

Attention is asked to the clear, well-reasoned opinion of the court, sustaining the agreement, insisting upon the view that we have hereinbefore urged, of the personal connections between the members and the society, and that that personal connection could not be transmitted to any one, nor would it descend to heirs at law. Death or withdrawal terminated and ended it.

The Supreme Court of Ohio, in the case of Gasely and others vs. the Separatist Society of Zoar, 13 *Ohio State Reports*, 145, considered the agreements under which that society existed, and are quite similar to those of the Harmony Society.

In that case one of the members withdrew, and afterwards filed a bill for an account against the society. It was held that she did not have any legal or equitable right to any portion of the property of the Zoar Society, and by her withdrawal she terminated her personal connection, and therefore all her personal right to the property. That she had a qualified interest in the property only as a member of the society, and to the extent of its use for their common support and maintenance, and when she separated from it she lost that right.

In Grosvenor vs. United Society of Believers, 118 *Mass.*, 78, the court considered the agreements of the society known as "the Society of Believers," commonly called the Shakers.

That case mainly turned on the right of expulsion, which the Court sustained. It especially confirmed the right of the ruling body to determine the occasion upon which a member should be expelled, and it also upheld the agreements by which, as in the Harmony Society, each member renounced all right to recover for services, and the court used the following language:

> "In each of these cases, the plaintiff, after arriving at full age, signed the instrument styled 'Covenant or Constitution,' by which the 'United Society of Believers' were bound together as one body in all their religious, social and pecuniary interests. Her rights must therefore be determined by the provisions of that instrument:
>
> "1. She cannot recover for her services, either upon the written agreement or upon an implied assumpsit; because all such right is expressly and explicitly renounced.
>
> "2. She cannot recover for the expenses of her support since her separation from the community; because, whatever support she was entitled to receive under the 'covenant,' she was to enjoy as a member

> of the church so constituted, with the others, 'according to their several needs and circumstances,' and only 'while standing in gospel union and maintaining the principles of this covenant.' It is not an absolute right of support, but a qualified and peculiar one; the extent and manner of which can be measured and determined only by the constituted authorities of the organization thus created."

In White vs. Brownell, vol. 3 *Abbott's Practice Reports*, 318, the Court of Common Pleas considered the agreements of the open board of brokers, in New York, and held that one who became a member thereof was bound by all the terms of said agreements, and that the court must recognize and enforce the provisions of the same.

It might not be out of place to observe:

(*a*) That in Schreiber vs. Rapp, *ante*, the Supreme Court of Pennsylvania affirmed the legality of the contracts of 1805 and 1827.

The Supreme Court of the United States, the Circuit Court of the United States for the Western District of Pennsylvania and for Ohio, the Court of Appeals of New York, the Supreme Court of Ohio, of Maine and of Massachusetts, affirmed the validity of similar contracts for the Oneida Society, the Shaker Society, and the Separatist Society at Zoar, as see cases *ante*.

(*b*) That the agreements do not conflict with the rules as to perpetuities, for the estate is vested, and at any time the property of the society can be sold by the trustees.

See especially on this the case of Goesle vs. Bimeler, 14 *Howard, U. S. Rep.*, 589.

Hillyard vs. Miller, 10 *Barr*, 326.

THE PROPERTY IS NOT HELD FOR A CHARITABLE USE.

Because,

(1) The property now sought to be divided is in a small sense the gift of any one, but, on the contrary, is the result and accumulation of years of labor and trade.

A charity necessarily implies a gift or bounty.

Bispham's Equity, sec. 123, (4th Edition).

(2) The agreements under which the property is accumulated adopt each contributor as a member, and by mutual and dependent covenants the adopted member agrees to work, and in consideration thereof he is to be fed, clothed, housed, etc., so long as he remains in the society.

There is, therefore, no distribution of property, but a *quid pro quo.*

What the member gets is a consideration to him for his labor, etc.

Kain vs. Gibboney, 101 *U. S.*, 362.
Corks vs. Manners, *L. R. 12 Eq.*, 574.
Jackson vs. Phillips, 14 *Allen*, 539.
Swift's Extrs. vs. Beneficial Society 73 *Pa.*, 362.
Marsden on Perpetuities, page 298.

(3) The only persons interested in the property, or to receive benefit therefrom, are those who are members of the society, and who sign the written agreement, and thus they take, not as charitable recipients, but as worthy members of the Harmony Society.

Bispham's Equity, sec. 124.
Perry on Trusts, sec. 697.
Babb vs. Reed, 5 *Rawle*, 151.
Swift's Exctrs. vs. Beneficial Society, 73 *Pa.*, 362.
Goesele vs. Bimeler, 14 *Howard*, 229, 230.
Schreiber vs. Rapp, 5 *Watts*, 351.
Nachtrieb vs. Harmony Society, 3 *Wallace, Jr.*, 66.
Speidel vs. Harmony Society, 120 *U. S.*, 377.

The conclusion is plain and undoubted.

No one of the appellants ever had or has now or would have if the Harmony Society was dissolved any right *whatever* to participate in the distribution of the society's property.

The members who at any one time comprise the society may distribute among themselves all the property of the society, of course providing for payment of debts.

No one else than these members at any time or in any contingency whatever may participate in the distribution of its property.

SECOND QUESTION.

Is the Harmony Society Dissolved?

The master and the court below answered this question in the negative. The society is not dissolved. It is just as truly a society to-day as it was in 1827, or 1836, or 1847. The agreements do not provide for any certain number of members to make a society, and seven is as good as seventy for that purpose.

There is a peculiar burden upon the appellants to induce this court to reverse such finding of facts as above referred to. The master went at great detail into all the evidence and found against the dissolution. So did the court below, when it affirmed the master's findings. Surely to reverse *both* a master *and* the court below would require a *palpably plain* case of error on their part.

But this court, if it examines the evidence, will be struck with the barrenness of it to prove a dissolution. It, indeed, proves just the contrary.

Restating the question, it is as follows:

(II). Has the Harmony Society been dissolved

(*a*) By mutual consent of its members, or

(*b*) By the abandonment of the purposes for which it was formed?

When the plaintiffs began to take testimony in the court below it was before an examiner who had not the power to

rule on questions of evidence. Counsel differed widely on what was admissible, and eventually both sides submitted to the Circuit Judge, Acheson, who wrote out an order defining the limits of the testimony, and among other things he restricted, in the first instance, this testimony to the question whether the society has abandoned the purposes for which it was formed.

Attention is called to the fact that there may be a distinction between the purposes of the society and the means adopted for the attainment of those purposes.

In Judge Acheson's opinion, quoted *supra*, the present inquiry is limited in this branch to this:

Has the society abandoned the purposes for which it was formed?

Now, as we hereafter show, under one view and in a limited sense, it might be argued that the sole purpose of the organization of the society was the approximation, so far as human imperfections will allow, to the fulfillment of the will of God. The means of reaching such an approximation, the agreement of 1827 prescribes, are the adoption and practice of certain principles, among which are communism of property and the observing of virtues and affections tending to temporal and eternal good.

Yet the practice of all these principles only tends towards the goal, which is the purpose, *i. e.*, the fulfillment of the will of God.

If the opinion of Judge Acheson be held to mean, technically and precisely, to limit the inquiry as to whether the society has abandoned its purpose to fulfill, as near as human imperfections will allow, the will of God, then, the inquiry

would seem to exclude the investigation of any particular means which seventy years ago were thought to be important. And this, because many people, at different times, and all claiming and believing in Christian fellowship, have thought that the most diverse, and indeed, hostile and irreconcilable means, were, from time to time, the most desirable in reaching the fulfillment of the will of God.

A noted illustration of this is the infamies of the inquisition, and the thousands of martyrs who have been burned at the stake.

If the inquiry were merely as stated it would involve the most elaborate, and also, indefinite and vague inquiries. It would raise such questions as—

How is the fulfillment of the will of God to be best accomplished?

What is the fulfillment of the will of God?

Does it require any form of worship of God, and if so, what?

Does it require any form of religious belief, and if so what?

This would open up a field of inquiry which is as broad as literature, and as prolific in disputes as the diverse religions of the world.

To answer such a question all the beliefs and sects of Christianity at least, possibly of humanity, would present themselves for judgment.

If such is the question, and the sole question for inquiry, *i. e.*

Has the Harmony Society abandoned its purpose to fulfill, as far as human imperfections will allow, the will of God?

Then, there is absolutely no evidence in the case which would support the affirmation of that issue. Even so versatile and willing a witness as Feucht does not rise to the occasion.

Assuming, however, that the word "purpose" in the opinion of Judge Acheson was used in the broad sense, to designate the general objects of the society, and the mode adopted for the accomplishment of such objects, we come to the consideration of the questions raised above, as to the alleged dissolution of the Harmony Society by reason of the abandonment of its purposes.

We therefore inquire:

(*a*) Has it been dissolved by mutual consent of its members?

The bill alleges this, paragraph 26; the answer denies it. The burden is on the plaintiff to prove it.

The master and the court below found against it.

There is not one particle of proof to sustain it. No witness testifies to it.

On the contrary, there is proof that it is in full life; that it now exists as it has for over (70) years; that it differs only in those things where time and new discoveries and inventions have worked changes in all our modes of life. The steam railroad, the telephone, natural gas, etc., have necessarily worked changes in all our lives—less in them at Economy than elsewhere. A society with ten or twelve men, or less, could not work the farms, or keep open the shops, etc., as if it had fifty or one hundred men.

See testimony of—

John S. Duss, (Record vol. III., pp. 487, 488.)
Frederika Mountz, type-written testimony 1378, (Record vol. III., pp. 382, 383, 390.)
Judge Hice, (Record vol. III., pp. 202, 203.)
J. Twin Brooks, (Record vol. II., pp. 650–651.)

(*b*) Has the society abandoned the purposes for which it was organized, and thereby become dissolved?

It will be noticed this requires an examination *in limine* of

(1) What were and are the purposes for which the society was organized?

(2) What would constitute such an abandonment as would work a dissolution of the society?

(1) What were and are the purposes for which the society was organized?

The answer to this is found in the agreements of 1805, 1827 and 1836. There and *only* there are the purposes for which the society was formed definitely and affirmatively stated.

The language of the agreement of 1827, which treats in detail of the purposes and the mode of their attainment, has the following preface:

> "*Whereas*, By the favor of Divine Providence, an association or community has been formed by George Rapp and many others, upon the basis of Christian Fellowship, the principles of which being faithfully derived from the sacred scriptures, include

> the government of the patriarchal age, united to the community of property adopted in the days of the apostles, and wherein the single object sought is to approximate, so far as human imperfection may allow, to the fulfillment of the will of God, by the exercise of those affections, and the practice of those virtues which are essential to the happiness of of man in time and throughout eternity."

The basis and foundation of the society is Christian fellowship, the principles of which are derived from the Holy Scriptures, and which include patriarchal government and community of property.

The exclusive or single object the society seeks is to approximate to the fulfillment of the will of God, and this is to be accomplished by the exercise of those affections and the practice of those virtues which are essential to the happiness o man in time and eternity.

What are those *affections and virtues?*

They are not specified.

No special form of religious belief is prescribed (nor was any declaration of faith ever required for admission to membership.)

The most that can be definitely said is they are those not inconsistent with Christian fellowship, as derived from the Holy Scriptures, and the practice of which tend to the fulfillment of the will of God.

Patriarchal government and community of property only are defined *as part of the principles of Christian fellowship.*

Taking the agreement of 1827 as a whole, it founded the society on community of goods, and gave it the patriarchal form of government, and the members were to practice the

affections and virtues growing out of Christian fellowship, and which tended to the good of the members in time and eternity.

The society was not a church or religious organization, but a community of kindly fellowship, having all property in common, and governed by a patriarch, whose will was the supreme law; and the affirmation of approximating to the fulfillment of the will of God by the practice of virtues and affections which tended to the eternal and temporary happiness of the members, was a broad, general assertion, not to or for any form of worship, but as a rule for daily life.

No specific rules were adopted, and each one, whatever might be his particular form of belief, was largely left to determine them for himself, subject to the patriarchal rule.

This is the result.

The foundation is Christian fellowship; that kindly brotherly love and affection, which had the divine sanction, and command of *Love one another*. It had no ceremonies, no altars, and no burnt offerings. It had no form of worship prescribed. But it was to be the rule of daily life.

Two of the principles derived from sacred scriptures are enumerated as the guiding and most important.

The Patriarchal Government, when George Rapp was the sole patriarch, which was changed by the agreement of 1847, when George Rapp died.

Community of property, as in the days of the apostles.

This is still unchanged. It necessarily subordinated the individual to the society, and, as the subsequent portions of the agreement of 1827 show, gave him no separate individual interest in the common mass which he could sell or transfer, and yet gave him, in one sense, a lien on the whole mass of property to insure his support and maintenance.

What are the other principles?

They are not enumerated.

The broad general rule is laid down to approximate to the will of God by the practice of virtues and affections which tend to man's happiness in time and eternity.

What these were is purposely not stated. It was left for the Patriarchal Government, succeeded by the Board of Elders, from time to time, to take such action as might be necessary or be deemed expedient to repress practices violating this broad rule, and to suggest others which might tend to its practieal triumph.

The Agreement of 1847, besides giving to the Board of Elders the entire internal management of the Harmony Society expressly gave it the power

> "to establish regulations for the maintenance and improvement of the morals of the society."

The only witnesses called by the plaintiffs who speak of the principles of the society, or the purposes for which it was formed, are Henry Feucht and Julius Stickel. Yet, each of them admitted, on cross-examination, that the constitution of the society was the source from which its principles were derived.

Henry Feucht—Record, vol. III, pp. 55, 57, 58.
Julius Stickel—Record, vol. III, pp. 82–87.

But the *purposes* for which the society was organized included the temporal bodily *support* and maintenance of each one of its members, as well as the temporal and eternal happiness of each. It would be a mistaken and abortive view which overlooked this. The consideration for the surrender of worldly goods to the common fund was the adoption into the membership of the society—becoming one of them—and being maintained and supported by the society. The common fund was the means by which this was mainly to be done.

One of the ingredients of the communism of property, as adopted in the days of the apostles, was that to each was given out of the common fund as he had need. The communism adopted by the Harmony Society, therefore, included the temporal support out of the common fund.

This support and maintenance was one, if not the *main, purpose* of the society.

Indeed, it underlaid all the others. Unless the body was kept, nourished and maintained, and the mind fed and en-

lightened by eating, neither temporal nor eternal happiness was possible. And yet, to do this, it was necessary to use the common property.

It would then be safe to conclude that the main and chief purpose of the Harmony Society was the bodily and temporal support, nourishment and education of each of its members.

The Harmony Society is not a religious organization or church.

The church, in its popular sense, was founded to propagate and preserve the religion of Christ, and whatever may be its sub-divisions, it prescribes the worship of Christ and God, and exists for that.

Religion is the recognition of God as an object of worship, and this may appear or exist in all the forms of worship which the varying beliefs of ages have created.

But to be a religious body, or a church, is necessarily to exist primarily for the worship of God by some set ceremonial and service.

This is the prime, and, indeed, the sole purpose, of the religious body, and the Mortmain statutes were passed to prevent vast quantities of property being tied up to further certain religious propaganda.

Now, the agreement of 1827 does not adopt any religion, or prescribe a form for the worship of God, or state that as its purpose. Its main purpose was to secure the maintenance and support of its members—not to determine upon some form of religious belief, and organize for its propagation and preservation.

All human government is an approximation to the fulfillment of the will of God. But no human government is considered as a religious body or a church.

The fact, then, that the fulfillment of the will of God is an object of this society, should not blind or mislead one to its main purposes, which were, as the details of its agreement shows, the organization for, and the acquisition of, property to be used for the maintenance, support and education of its members.

Such a society could acquire and possess property without a limit, while the Mortmain statutes step in and limit acquisition in the case of church and religious societies.

Inside of the society, and one of its instruments, was a church, but the church was not the society, nor yet the society the church.

Thus, in Article III of the agreement of 1805 it speaks of the

"church and school."

Again in Article IV of the agreement of 1827.

Again, the agreement of 1847 speaks of appointing spiritual leader and having authority as to

"church discipline."

They all recognize the church a body, existing just as the school, but neither church nor school was the society or aught else, except one of the means of accomplishing one of the purposes of the society.

(2) WHAT WOULD BE SUCH AN ABANDONMENT AS WOULD WORK A DISSOLUTION?

It is obvious that the Harmony Society agreements were between all of the members constituting the society. Each member was a contracting unit. In consideration of the unit surrendering to the society all his property and all his labor, the society agreed to support him and his in health and sickness and for his and their lives.

Each member can insist upon the fulfillment of this contract, and the entire mass of the property is marked with that burden, and without the consent of each that property cannot be taken by one or all of the others and divided among them. What all the members but one cannot directly do, they cannot indirectly do. If directly, by vote and act, they cannot take and scatter the common fund, they cannot accomplish indirectly by evil conduct.

The abandonment of purposes or principles which would take from each subscriber this lien he has on the common mass of the property, and would dissolve the society and scatter its assets, so that no one of the signing members could any longer have a society, it could compel to keep its covenants, or a common mass of property he could rely upon for his support must necessarily, therefore, involve all the members; not merely a part, but all.

If a third or a half abandoned, and the other half or two-thirds did not, but kept the faith, surely the latter would not be punished for the sins of others.

Surely because, say, the one-third or one-half were false to their written contract and promise to practice the virtues and affections of Christian fellowship, which tend to man's temporal and eternal happiness, this would not convict the other two-thirds or one-half who had not been false, but had faithfully kept their contracts.

Remember the contract is between each individual on the one side, and the Harmony Society on the other.

Because some of the individuals kept not their part of the contracts is no reason why all the rest of the individuals and the Harmony Society should be prevented from keeping theirs.

The abandoment, then, would have to include all the members.

The things abandoned would be the purposes of the society.

That is, all the purposes.

Not part of them, but all of them—that is, all of the main things for which the society was organized.

It will be noticed that no one of the members asserts a dissolution, or asks for one, or alleges that the purposes of the society have been abandoned.

The allegation is made by alleged heirs of deceased members, and they ask the court to decree and adjudge that:

(*a*) There has been such an abandonment of purposes

as

(*b*) Should on their petition make a dissolution.

The abandonment must be utter and entire.

Not a temporary lapse, even if repeated, but a continuous and determined line of conduct, showing the settled purpose of wholly turning away from the original purposes of the society, and devoting the common fund to alien, incongruous and hostile purposes.

There was no abandonment before 1890.

The bill alleges this in the most direct and positive manner.

Paragraph 8th of plaintiff's bill asserts:

> "*That the Harmony Society from the period of its inception until a recent date, adhered rigidly to its plan of government and became illustrious* and highly respected by reason of its sincere advocacy of the equality of man, its espousal of the highest principles of Christianity, and its honesty and benevolent administration of all public functions, whether in the management of its internal affairs or in its many transactions with the citizens of Western Pennsylvania."

Again, in paragraph 10th:

> "That during the year 1890, after a long period of *prosperity* and *complete harmony* in said society began a second conspiracy." * * *

Notwithstanding the claims made, or the agreement as to the effects of the contract of 1847, these averments of the bill are directly to the contrary.

The present bill was filed on June 27th, 1894.

The abandonment then was after 1890, and between 1890 and June 27th, 1894, because when the bill was filed the allegations in it were (paragraphs 25, 26) that the Harmony Society *then was* dissolved.

The abandonment of purposes which worked this destructive effect in a society founded in 1805, and surviving the De Leon conspiracy of 1831, when 175 persons left and were paid $105,000.00, and the different litigations the society has had, was, the bill alleges, effected between 1890 and 1894, *and this with the admitted facts staring them in the face, that in 1890 and 1892 the society, as a society, formally reaffirmed its ancient constitution and agreements.*

See those agreements.

Has the plaintiff shown such an abandonment of the purposes for which the society was organized?

The purposes of the society were, in a general way, given by Feucht and Stickel, though each admitted the written agreements were the supreme evidence of them, as is evident they are.

Feucht gave the purposes (Record, vol. II, pp. 435, 436) as

> "a community of goods, universal brotherhood, and a celibate society in every respect."

Then (Record, vol. III, page 449,) he says the things the society abandoned are:

(1) Christianity;

(2) Brotherhood;

(3) Humanity.

There was no principles of harmony or brotherhood, or anything of that kind, and he seems to assert intemperance and immorality as the condition of the members.

He says the agreement of 1827 is the only declaration of faith and principles he knows of (Record, vol. III, pages 57 and 58).

Stickel (type-written testimony, page 382,) says the main characteristic was a brotherhood where all were treated alike.

Again (Record, vol. III, p. 84,) a celibate life; no drunkards; Christian people going to church; couldn't go out of the village; home at nine.

The testimony as to the abandonment of these things will be hereafter considered, but attention is just now called to the following:

The plaintiffs have not shown an abandonment by showing any written contract or avowal of the present members so to do. On the contrary, the last general articles of agreement in 1890 and 1892, signed by all of the then members, distinctly affirms and re-establishes the agreement of 1847, which reaffirmed those of 1827 and 1836.

Thus the agreement of April 30th, 1890, signed by Henry Feucht and Julius Stickel, and every then member of the society, expressly affirmed:

> "We do hereby solemnly recognize, approve, reaffirm, and continue the articles of agreement and

compact of our association entered into at Economy on the 12th day of August, 1847, and recorded in the recorder's office of Beaver county as set forth in the preamble hereto, *and declare the same to be in full force as a whole and all parts thereof, including the agreements and compacts mentioned and designated in the first article thereof as fully and to the same extent as said mentioned agreements were recognized and established by said first article.*"

Referring to this agreement of 1847, we find in its first article it expressly affirms and continues the agreements of 1827 and 1836.

So in the spring of 1890, in a formal and solemn manner, every member of the society joining, we have a reaffirmation and republication of the agreement of 1827.

And so in 1892.

By another agreement, dated December 20th, 1892, all the member (except the Feuchts) said that they do—

"*herebe ratify and confirm* the articles of agreement and compacts of our association entered into at Economy on the 12th day of August, 1847, and those of April 30th, 1890, * * *"

This was the re-publication in December, 1892, of the agreement of 1827.

The appellants do not pretend to show any action *of the society* or of its Board of Elders formally turning away from the old things and kneeling unto alien Gods.

No particular number of members to constitute society.

The society, as a society, exists now as it did in 1847.

Aside from the change in the industries of the society, and the state of its finances, the entire scope of appellants' evidence on this head is that certain individuals were guilty of immoralities, and that the Board of Elders, on complaint made, neglected to control the evil.

Not that the society, as a whole, was immoral, and given to lust and drunkenness, but that A, B and C of its members were, and, on complaint made, this was not remedied.

Even if this were true, it falls lamentably short of the fullness of proof required.

But let us see what the proof on it is.

The only witnesses alleging abandonment are Feucht and Stickel.

Feucht certainly is discredited and wholly overthrown as a truthful man, but assuming that he and Stickel speak the truth, let us see what their testimony is.

Henry Feucht:

He was born in the society (hence, his parents did not practice celibacy.) He left in 1865, and married, receiving from the trustees $1,050.00. He returned in 1888, was admitted again in 1890, and signed anew, (Ex. 18), the constitution, (220-223). He is by nature an envious, jealous man—fault-finding and mischevious. He began at once to stir up strife in the society, and was removed by Henrici and Lenz, to the brickyard, where he was kept until 1892. He caused trouble there, and was sent to keep the orchards and bees. His misconduct, refusal to obey the elders, restless, mis-

chievious, back-biting and slander, caused the Board of Elders, by a vote of eight to one, to expel him on April 25th, 1892. Because the sore financial distress the society was then in, this was rescinded August 1st, 1892. He kept up his evil conduct, refused obedience to the Board of Elders, and soon after Henrici's death, and on February 10th, 1893, he filed a bill in equity in Beaver county against the society, which asked for a receiver, and precipitated a run on the Economy Bank, which nearly wrecked it and the society, too. To get rid of him and his wife, his brother and his wife, and his sister, the society gave them in money $28,500, and in land about $15,000 or $20,000, and he signed a release dated June 21st, 1893.

Since then his occupation seems to be to circulate slanders and aid litigation against the society.

The sole cause of all his evil doings is his jealousy of Mr. Duss, and his (Feucht's) failure to be elected either as an elder or trustee of the society.

He is contradicted by every witness in this case with whom he comes in contact.

J. Twin Brooks. Record, vol. II, 647, 650.
Judge Hice. Record, vol. II, pp. 727, 728.
John S. Duss. Record, vol. II, pp. 864, etc.
Mrs. Emertz, 1226, 1245, of type-written testimony.
Susan Erisman, 2409, of type-written testimony.
Frederica Muntz, 1383, 1384, of type-written testimony.
W. H. Breitenstein, 2077, 2083 of type-written testimony.
T. H. Given, 2806, 2809, of type-written testimony.

Numerous witnesses swear that his reputation for truth is bad.

Feucht himself says he swears to what is told him as personal knowledge. (Pages 250, 251.) Record, vol. II, pp. 471, 472.

His testimony is in flat contradiction of his written statement as to Duss, Ex. 20, (page 333). Record, vol. II, pp. 501, 502.

His evidence as to the abandonment will be found in detail from pages 306 to 377 of type-written testimony, and Record, vol. III, pp. 57–66.

(1) *Celibacy:*

He testifies that he and his sister were born in the society (305), and that there was no provision in favor of celibacy in the constitution, and that he has no personal knowledge of the members ever adopting the same. (Record, vol. II, p. 486, 387. Record, vol. III, p. 57, 58.)

(2) *Universal brotherhood:* Record, vol. II, pp. 487, 488.

He testifies that by this he means that all were expected to treat each other alike; live up to Christian principles; to be good, honest, upright Christian citizens, and respect fellowship and morality; to live like temperate men; like honest citizens and Christians, and not as adulterers and drunkards, (307–309).

(3) *Christianity:* Record, vol. II, pp. 488, 489.

Feucht's reason for saying that Christianity was abandoned was because Duss said to Henrici in the pulpit,

"I have looked upon this hypocrisy long enough," (310, 311). This was the only instance of what he called the abandonment of Christianity, though he asserts that, contrary to the principles of the society, members were maltreated by council members, and that the foundation principles of the society were not respected, but he gives no instance, though pressed to do so.

There is no evidence that old beliefs, or old forms of worship were abandoned.

(4) *Abandonment of Brotherhood:* Record, vol. II, p. 490.

The witness gives at length his idea of the brotherhood, and then gives, as an instance of its abandonment, that he was expelled without notice, and the opportunity to be heard. He gives no other instance of the abandonment of brotherhood.

(5) *Abandonment of Humanity:*

He gives no instance whatever of this. Record, vol. II, pp. 490, 491.

The witness states (Record, vol. II, p. 491,) that the persons whom he accuses as members of the society of abandoning christianity, brotherhood and humanity, were Messrs. Duss, Laubbe, Nicolaus, Platz, Reithemuller and Mrs. Siber, and that was all. Record, vol. II, p. 491.

Taking up his averment that there were no principles of harmony, or of brotherhood or any thing of that kind obeyed, and that intemperance, immorality, and all other things connected with immorality prevailed, his testimony is as follows:

This began after Duss was elected Junior Trustee, (Record, vol. II, p. 490).

The instances of immorality, including adultery and drunkenness, he gives as follows:

(6) *Drunkenness:*

Laubbe, who is dead. Record, vol. II, p. 492.

Nicolaus, no longer a member of the society. Record, vol. II, pp. 492, 493.

Reithmueller, one of the then trustees.

Platz, no longer a member of the society.

Stievater, no longer a member of the society. Record, vol. II, p. 493.

Witness admits he never complained to the Board of Elders, but he alleges that he did to Henrici, in the presence of Duss. (See his statement, Record, vol. II, p. 493.) Duss contradicts this, (Record, vol. III, p. 543).

He says this is the only complaint he made. Record, vol. II, pp. 493, 494.

Nicolaus is the only one he spoke to about his habits. Record, vol. II, p. 494.

He told Father Henrici of selling liquor to minors (Record, vol. II, pp. 494, 495).

The society made and sold whiskey from his earliest knowledge (Record, vol. II, p. 495, and type-written testimony, 321); and also wine and beer—thirty-five or forty years back.

These are all his instances of drunkenness in the society. Record, vol. II, p. 494.

(7) *Adultery:*

Letter from a Catholic priest and a doctor (name of neither given) to , asserting the confession of a dying woman to her husband, and impeaching Laubbe, one of the members. This letter witness gave to Stickel. Record, vol. II, pp. 495, 496.

Fredericka Kroll, and declarations of John Shied to Mrs. Kroll, (Record, vol. II, p. 497). Declarations of Fischern and Fredericks. (666, 668, 669 of type-written testimony.)

Jacob Nicolaus. Record, vol. II, pp. 497, 498.

These are all the charges of adultery that the witness cites. Record, vol. II, pp. 498, 499.

An examination of the evidence will show that he, in no instance, speaks from personal knowledge, and it was the rankest kind of hearsay testimony that he introduced.

On page 499 of Record, vol. II, he introduces the case of Mrs. Samuel Siber, who left the society on account of the rumors connected with her.

Feucht's testimony as to Mrs. Siber is on pages 499 and 500 of Record, vol. II.

On page 500 of Record, vol. II, he again asserts he has no other instance of adultery or charge to make.

(8) *Moritz Fredericks' treatment:*

Record, vol. II, 518, 519, abandonment of humanity.

(9) *Elizabeth Beck:* (743 of type-written testimony.)

Her treatment—

This in brief is all of Feucht's testimony—

Then comes the other witness—

Julius Stickel:

Stickel was much pleased with the society for a long time after he joined it, and down to Lenz's death in 189–, the society was all right, the members moral and correct, and the purposes of the society carried out, (392-398 of type-written testimony.

By and by, after Duss was elected junior trustee, (Record, vol. II, p. 523),

"it changed a little." Record, vol. II, pp. 525, 526.

> "Well, in very short words, I don't know what to say; in all their moral life everybody was becoming more careless;that is what I can say."

Drunkenness began to abound (Record, vol. II, p. 526), but it is only among men.

There was not much drunkenness at first, before he joined, (Record, vol. III, p. 527, as when Duss became trustee.

His knowledge of Mrs. Siber and his information to Duss. Record, vol. II, pp. 529, 530.

Other information to Duss (Record, vol. II, p. 532, 533). This is the letter which Feucht gave to Stickel about Laubbe (411 of type-written testimony).

He complained to Duss of drunkenness among the elders (Record, vol. II, pp. 536, 537.).

On cross-examination, he identifies the instances of drunkenness as follows:

Everybody in the society drank, receiving regular portions of wine, etc., (Record, vol. III, p. 93).

He identifies the following cases of extreme drunkenness:

Laubbe—Record, vol. II, pp. 542, 543.
Stievater—Record, vol. II, p. 543.
Platz—Recrd, vol. II, p. 544.
Hugo Miller—Record, vol. II, pp. 544, 545.
Reithmueller—Record, vol. II, p. 545.
Fischern—Record, vol. II, p. 545.

These were the only members who drank to excess (Record, vol. II, p. 545).

He gives the names of Lena Wolfanger and Philopena Wolfanger as the only two women who drank too much (Record, vol. II, p. 546).

At this time the society had 15 to 16 male members, and 28 to 30 females (Record, vol. II, p. 545).

He says Duss did not drink (Record, vol. II, p. 547), but he complained to Duss of the others drinking (Record, vol. II, pp. 547, 548).

This very briefly, but sufficiently, sketches the plaintiff's evidence on the question: Had the society abandoned the purposes for which it was formed?

No one of the members of the society, charged with any offense of any kind by Feucht and Stickel, are now members of the society except Mr. Duss, who has been overwhelmingly vindicated of the gross slanders against him and Reithmeuller, whose only offense has been occasionally drinking too much, as alleged by Feucht and Stickel, and contradicted by Judge Hice —(Record, vol. III, pp. 199, 204); *Mr. Duss*—(Record, vol. II, pp. 866, 867); *Mr. Brooks*—(Record, vol. II, pp. 647, 653, 683, 684). *It is not pretended or claimed that any other person, now a member of the society, has been guilty of any wrong whatever, or has abandoned in any way the purposes of the society.*

Drunkenness:

From the earliest organization of this society, down until the present day, its members have been mostly Germans, and to them has been allowed weekly, or every other week, during all that time a quantity of wine or beer or whiskey, two gallons during the summer, every two weeks, to each man, and one gallon to each man, every two weeks, in the winter. The society originally had a distillery for the manufacture of whiskey, and a place where beer was brewed. Its whiskey was a celebrated brand on the market, and largely sold. It made wine every year, and now has something like 30,000 gallons on hand. It raised grapes and manufactured them into wine.

It never was a total abstinence society, and as was quite natural, ever since its organization, one or more of its members have, from time to time, become too much addicted to drink.

To say that this increased to an alarming extent merely because Mr. Duss was elected trustee, in 1890, is to state a rank absurdity, and the proof in the case shows this. Mr. Duss himself is a temperance man, and a total abstainer. How his election to the office of trustee could increase the drinking habits of Platz and Stevater, et al., it is difficult to see.

While Feucht and Stickle have greatly exaggerated as to the drunkenness, every one of the persons whom they accuse of drunkenness has left the society, except Reithemuller, and as to him the evidence is by no means satisfactory that he indulges in more wine or beer than he can safely take care of.

The sale of liquor by the society has been, ever since its organization, down until the time of the Brooks law, without a license, but after the Brooks law they were advised it was necessary to procure a license, and such a license was procured for wholesale selling.

So far as drunkenness is concerned, of the twelve (12) then members of the society, only one, Gottlieb Reithemuller, is accused of it, and he denies it, and other witnesses sustain him.

Adultery:

All those accused of that have left the society. Mrs. Siber went out, and so did Stievater and Laubbe. The testimony against either of these was wholly insufficient, rank hearsay and deliberate exaggeration of the declarations of third parties.

The case of the charge against Mr. Duss as to Fredericka Kroll, including the perjured testimony of Weggle, and also

the testimony of John McNamee, as to what he saw in looking through the window, will be treated of further on, but all the charges against Mr. Duss have been overthrown by overwhelming testimony.

See as to the testimony of Stickel and Feucht as to the priest's letter about Laubbe, Mr. Duss' testimony—(Record, vol. II, pp. 862, 863).

See as to their testimony as to Mrs. Siber, Mr. Duss' testimony—(Record vol. II., pp. 861 to 863.)

No present member of the society is charged with adultery. There is no evidence whatever of direct proof as to anybody being guilty of it. These suspected persons, Mrs. Siber and Stievater and Laubbe—are no one of them members of the society. The total number of members of the society charged with it were three or four out of a membership of about forty-five.

So far, then, as the plaintiff's case depends upon the proof that the members of the Harmony Society had, as a body, or as a class, abandoned those moral precepts and principles which are recognized as part of all Christian fellowship which tends to temporal and eternal happiness, it has utterly failed.

The society was not a body where the members were given to adultery.

The society was not a body where the members were given to intemperance.

There was no abandonment of humanity, or Christianity, or brotherhood, and the case of the plaintiff—lamentably weak in any aspect of it—here, again, utterly and totally fails.

Abandonment of Industries:

Prior to the agreement of 1847 nothing whatever is mentioned in any of the articles of association as to what the industries of the society are, or should be.

The agreement of 1847 provides that the board of elders shall have the power—

> "to regulate and manage exclusively the internal temporal concerns of the Harmony Society; to appoint and remove superintendents in the several departments of industry; to make regulations and give orders in relation to their business operations, and generally to take care that the members perform the duties assigned to them."

The board of trustees is given power to manage the external business and affairs of the society, and the words are:

> "We do further ordain and establish a board of trustees for the exclusive management of the external business and affairs of the society."

This agreement of 1847 evidently then left to the board of elders and the board of trustees, within their respective limits, the determination of what industries the society was to engage in.

Ever since Rapp first came to America, in 1805, down until the present time, the industries and businesses of the society have followed its various wants and conditions, and the changing times, but no one industry has ever been declared, by any agreement, to be a part of the purpose for which the society was organized.

From time to time the society has engaged in nearly every branch of industry. For very many years it ran a distillery, making and selling whiskey, which it does not now. For

many years it made and sold beer, which it does not now. For years it made and sold silk, which it does not now. For years it made and sold woolen goods and blankets, which it does not now. It was engaged in the manufacture and sale of clothes, which it is not now. It was engaged in the banking business—the Economy savings bank—which it is not now. It was engaged in the steel business—Union Drawn Steel Company—which it is not now. It was engaged in the railroad business—the Pittsburgh & Lake Erie and the Pittsburg, Charleston & Youghiogheny Railroad Companies—which it is not now. It was engaged largely in the laying off and selling of lots, which it still continues, through the Union Company. It was also engaged in the manufacture and sale of cutlery, which it is not now. It was also engaged in the manufacture and sale of files, which it is not now. It was also engaged in the lumber business, which it is not now, except in a small way. It was always, more or less, engaged in agriculture, and so it is to-day. As the number of men in the society declined, hired men were employed to carry on the work, and this—as the testimony has already disclosed, and as will be more fully stated hereafter—together with other financial indiscretions of Henrici and Lenz, trustees, very nearly wrecked the society financially.

Then, too, when the society was composed of a large number of members, anywhere, say, from 150 to 200, or more, the internal industries of the society were carried on more elaborately than now. For example, there was a tailor shop, a boot and shoe shop, a wagonmaker's shop, a blacksmith shop, and such other shops as to furnish to the members their daily wants. As the membership of the society decreased and grew less, until the men of the society merely numbered four or five, and the women but eight or ten, it was impos-

sible and foolish to carry on such shops, no longer necessary for the welfare of the members.

The conclusion as to industries is as follows:

(1) No particular form of industry is prescribed in the articles of agreement, but the same is left to the Board of Elders and Trustees under the agreement of 1847.

(2) The Board of Elders and Trustees to-day, as in the past, have determined what the industries are which the society should follow.

(3) The industries of the society were always shifting, and depended upon the varying changes and surrounding circumstances.

Customs and usages of the society:

It is not pretended, except in the ridiculous charges made by Stickel and Feucht—(Stickel as to bad sausage served him once, (Record Vol. II, p. 535; Record Vol. III, p. 533), and Feucht as to his fight in reference to the purchase of two pairs of shoes, (Record Vol. II, pp. 479, 480; Record Vol. III, p. 534)—that each member of the society is not kept in accordance with the covenants in the different articles of agreement. Each is served alike, and each gets what the highest in rank gets. The mode in which this is done—by the store now carried on in a room in the Great House, by the baker in his distribution of bread, by the butcher in his distribution of beef, mutton and ham, by the dairyman in his distribution of milk, by the miller in his distribution of flour, etc., etc.—is given at length in the testimony of Mr. Duss.

An immense amount of testimony has been given as to change in the dress of the members of the society. This is a trivial and unimportant matter, and would hardly seem to justify the time that has been devoted to it. The truth seems to be that, when the society was making silk and woolen goods and cloths, it did manufacture a peculiar color of blue, and this material was used by different members of the society for their clothing. This, with the antiquated cut, and the somewhat peculiar hat and bonnet, did distinguish the members of this society. When these "blue" goods were exhausted, they necessarily had to resort to the purchase of material, and then commenced the deviation in color. The testimony on this will be found outlined by Judge Hice (Record Vol. III, pp. 199, 200, 208), and others.

There is, therefore, nothing in this abandonment of customs and usages, because:

(1) The society was not organized to carry out any particular custom or usage as to dress, or mode of distribution of supplies, etc., or as to what industries were to be followed.

(2) All these customs and usages and industries were under the control of the Board of Elders or Board of Trustees.

(3) There has been no change whatever in either the industries, customs or usages, except that which followed from the much smaller numbers of members, and the changed conditions and circumstances of life in which the society now finds itself. To carry on the old industries, for example, the file and cutlery business, involved them in a loss of, say

$500,000. To repeat that folly, and attempt now to carry on any of those old industries, for example, agriculture as it was carried on thirty years ago, would be to wreck financially the society.

Community of goods:

The sale to the Union Company of the home tract of land at Economy, and the Allegheny City land, it is asserted in the 20th paragraph of the bill, is an attempt on Duss' part

> "to wholly terminate the existence of said society, not only as to the government thereof by the Board of Elders and by the members, but also as to the ownership of any property."

Plaintiffs allege it was not competent for the trustees to make this conveyance, and it is a breach of trust and invalid.

The facts are, that after the debts of the Economy Savings Bank were paid, by the society borrowing large loans on long time, new troubles arose. Such suits as the present were threatened, which might involve the title of the society to its real estate, and prevent its sale to raise money.

Then, escheat proceedings were threatened, which would still further complicate the title. In addition, it was desirable to have the surplus value of the real estate, over and above the mortgage, available for emergencies. To put the real estate where it could the more readily be sold, and to have its surplus value thus available, it was advised by Mr. Brooks, page , and Judge Hice, page , that a corporation be formed capable of taking the real estate, and to it should be conveyed the real estate, and the stock, (all of the stock) of the corporation should be owned and held by the trustees for the Harmony Society. None of the personal

property was conveyed, but all of the real estate at Economy and Leetsdale was. This did not include Beaver Falls lots. All of the stock, directly or through the trustees, is owned by the Harmony Society.

The trustees hold in their names, as trustees, 7,950 shares. Dickson's testimony, Record Vol. II, p. 775.

The other stock is held by Dickson, ten shares, Hice ten, Duss ten, to make them eligible as directors, but written statements that it is the property of the society is signed by each.

Really, and in truth, the Union Company holds the naked, legal title, for the use and benefit of the Harmony Society, because that society owns all the stock in, and really is, the Harmony Society.

Technically, the trustees have converted realty into personalty, and the personalty is now held by them in place and stead of the realty. The property is not distributed among the members of the society, but is held upon the same trusts, and by the same trustees, as was the real estate.

Have the trustees, in so doing, abandoned the purposes for which the society was founded, or violated the trusts confided in them?

No one of the articles of agreement pretend to determine how the money of the society will be invested—whether in realty or personal property.

The agreement of 1847 provides as follows :

> "*Article 5th.* The said trustees shall jointly and severally have and exercise the powers following, to wit :

"1st. In their own names, or that of either of them, or otherwise, to purchase and sell, deal, barter, exchange and traffic, make all contracts and bargains, in the possession of the business, to invest the funds in stocks and other securities, and make transfers and assignments, to collect debts, receive and pay out moneys, settle claims, compromise disputes, institute legal proceedings, appoint and dismiss agents, clerks, and attorneys in fact and at law, and generally to transact all the external business affairs of the society.

"2nd. To make donations to seceding and excluded members, and the representatives of those who are deceased, and for such benevolent and charitable purposes as they deem prudent and fit.

"3rd. The said trustees shall have power jointly to purchase real estate in their own names, and also in their joint names to grant, bargain, sell and convey all or any of the lands and tenements now or hereafter owned by, or belonging to, the said society, and for this purpose to execute deeds of conveyance in fee simple or otherwise in their joint names, but the proceeds of all such sales shall be held in trust for the society."

This, undoubtedly, gave the trustees the most unbounded powers to carry on all sorts and kinds of business, and to convert real estate into personal property, or personal property into real estate. The conversion was in their discretion. They might do so when it was deemed advisable.

To do so violated no trust. It was the legitimate exercise of undoubted powers.

When it is recollected that every single member of the society gave his or her written consent to such conversion, (see Ex. 80) the objection now raised by outsiders seems ridiculous.

The sale to the Union Company was of a part, not of the whole, of the property of the Harmony Society.

See Exhibit No. 90.

In Butler County the entire property was sold. So in Posy County, Indiana. Why not here?

EQUALITY AMONG MEMBERS.

Want of this is alleged in the 23d paragraph of the bill and denied in the answer.

The only testimony offered in support of it is Henry Feucht and Julius Stickel. Both left the society in 1893.

Feucht's justification of the charge is found (Record Vol. II, p. 479–483,) and it involves his purchase of shoes, quantity of food he got, and refused tickets on the railroad.

Mr. Duss explains (Record Vol. II, p. 479; Record Vol. III, p. 533), about the shoes, and a host of witnesses cited *supra* as to distribution of supplies.

Julius Stickel (Record Vol. III, p. 68).

He specifies bad bologna pudding (Record Vol. II, p. 535).

This is explained by Mr. Duss, Record Vol. III, p. 533.

Not a single member of the society complains of any discrimination against him or her, now or at any other time.

Feucht and Stickel, not now members, the only dissatisfied ones.

JOHN S. DUSS.

All the other scandalous and false charges in the bill may be appropriately considered under this heading:

The bill alleges,

> "That the Harmony Society, from the period of its inception until a recent date, adhered rigidly to its plan of government, and became illustrious and highly respected by reason of its sincere advocacy of the equality of man, its espousal of the highest principles of Christianity, and its honesty and benevolent administration of all public functions, whether in the management of its internal affairs or in its many transactions with the citizens of Western Pennsylvania."

Then follows (paragraph 9) a reference to the Count de Leon conspiracy in 1832, and then in paragraph 10, plaintiff alleges:

> "*That during the year 1890, after a long period of prosperity and complete harmony in said society*, began a second conspiracy, as last aforesaid, the results of which have overturned and destroyed the entire government of the society, wasted nearly its entire wealth, depleted its membership to a few aged and infirm women, and placed the management of the society and the control of its remaining assets in the hands of one man and certain associates and confederates within and without the ranks of the society, as hereinafter more fully set forth."

Then follows (in 10th, 11th and 12th paragraphs of the bill) the alleged details of a plot by Duss and others to turn the Harmony Society over to Dr. Cyrus Teed and the Koroshan Society, presided over by Teed; but, as the bill alleges (paragraph 12), this plot was defeated, and

> "The plot to admit said Teed and his female followers was, for the time being, abandoned, and an entirely new and equally destructive plot was then arranged by said Duss, with the assistance of other confederates not allied with said Teed, and the same has now been almost consummated, as hereinafter more fully set forth."

Thus ended, as the bill itself admits, a plot to admit Teed and his society into the control of the Harmony Society.

THE SECOND PLOT,

Was (paragraph 14), according to the bill, as follows:

> "Upon the failure of the plot to turn the society over to the said Teed, the said Duss concluded to *wreck and dismember* the said Harmony Society, and thereby attain for himself and confederates what he had lost by not colonizing said society as aforesaid."

The purpose of the wrecking and dismembering was that Duss and his confederates

> "might acquire the entire assets of said society."

The bill does not allege that this second conspiracy has been consummated, but, on the contrary (paragraph 12), alleges that

> "The same has been almost consummated."

The things which Duss did, in pursuance of this combination to wreck and dismember the society, according to the bill, are as follows :

(*a*) Duss agrees (paragraph 15) with Hice and Reeves to use the money of the Harmony Society to pay off the alleged indebtedness of the Economy Savings Bank, and this bank was then wholly insolvent, and the money was used

> "without the knowledge or consent of the members of said society."

That his use of these funds was

> "fraudulent and unauthorized."

(*b*) That Duss and his confederates, (paragraph 16)

> "conspiring together to defraud your orators and the members of said society generally, and to provide means for the payment of the indebtedness of the said Economy savings bank,"

caused to be executed the four hundred thousand dollar mortgage on December 21, 1892; and this mortgage was made

> "without any authority from the said society."

And that the said mortgage was not the act of the society. That Duss, Hice and Reeves, and certain other confederates,

> "*by means of a foreclosure of said mortgage*,"

intended to obtain possession of all the property of the Harmony Society.

(*c*) That Duss, in June, 1893, (paragraph 16),

> "for the purpose of raising another large fund wherewith to secretly secure and induce removal of those members most likely to inquire into the validity or propriety of his conduct as trustee,"

caused to be executed the second one hundred thousand dol-

lar mortgage, which was made without authority from the society.

(*d*) That when Duss was appointed trustee (paragraph 18) the society was possessor of

> "valuable dividend-paying stocks in prosperous bridge companies, railroad companies, water companies and other prosperous corporations in the State of Pennsylvania, to the amount of nearly two millions of dollars, and that said Duss illegally sold, assigned and disposed of all, or substantially all, of said stocks."

That Duss, by these sales, in attempting to raise funds

> "to carry out his purpose hereinbefore set forth, and to divert the assets of the said Harmony Society from the use of your orators and the members and to appropriate the same for the advancement and enrichment of him, the said Duss, and his confederates."

(*e*) That Duss (paragraph 19), by

> "artifice, misrepresentation, coercion and fraud, induced or forced nearly all of the active and more intelligent members of the society to leave and withdraw from the said society,"

leaving Duss in control, with a few aged and infirm members who are ignorant of his plans.

That the money of the society was used by Duss fraudulently and secretly in getting rid of these members, and that the members Duss thus forced or induced to withdraw are as follows:

Samuel Sieber (Junior Trustee),
Hugo Miller,
Jacob Nicklaus,
Blaszius Platz,
Morits J. Fredericks.

Four of these were members of the Board of Elders, and in their places Duss elected Susie C. Duss, his wife, Maria Diem, eighty years old, Fredericka Muntz, seventy years old, Regina Lautenschlager and Carolina Molt.

That in addition to the withdrawal of members of the Board of Elders, Duss also

> "fraudulently and secretly induced, by misrepresentation, coercion, and the payment of large sums of money, the following members to leave the society":
>
> Julius Stickel,
> Pauline Stickel,
> Sigmund Stevater,
> Christina Hoerer,
> Elizabeth Sieber,
> Benjamin Feucht,
> Rebecca Feucht,
> Henry Feucht,
> Margaret Feucht,
> Tirza Feucht,

(*f*) That Duss, on April 12th, 1894, (paragraph 20),

> "in the utmost disregard of his trust, secretly entered into an agreement with Hice, Reeves and one James Dickson,"

whereby he agreed to convey to the Union Company the town of Economy, the purpose of it being,

> "to wholly terminate the existence of said society, not only as to the government thereof by the Board of Elders and by the members, but also to the ownership of any property."

(*g*) That, in pursuance of his designs, the bill alleges (paragraph 21) that Duss

> "being unable to obtain the consent of the remaining members to withdraw from said society, upon the receipt of their share of the said assets, is now endeavoring to compel said remaining members to depart by means of intimidation and oppression."

The bill then specifies the oppression in the case of Elizabeth Beck.

(*h*) Then follows (in sections 22, 23 and 24) additional personal abuse of Duss, without connecting it with this alleged attempt of his to get hold of the assets of the society.

Thus paragraph 22 alleges that he is selling liquor without a license and contrary to law.

(Paragraph 23). That the principle of equality has been abolished, and Duss lives in luxury and the other members in squalor.

(Paragraph 24). That Duss is a man of bad moral character, and is unfit to act as spiritual advisor, and that he has been guilty of

> "the gravest duplicity with his cousin, Fredericka R. Kroll, a young girl of some eighteen years of age."

Paragraph 25 alleges

> "that recently said Harmony Society has become dissolved; that all of its purposes and practices established as aforesaid by the founder of said society and by the ancestors of your orators have been abandoned."

(Paragraph 26).

> "That by common consent, this association has ceased to exist as an association, and that if the property thereof has ever been impressed with a trust (which your orators deny, as being contrary to public policy and void in law or equity), such trust

has wholly ceased, and the assets of such dissolved association have wholly reverted to the donors thereof, among whom were the ancestors and intestates of your orators, as hereinbefore fully set forth."

ANSWER.

First Plot:

That Duss ever conspired, as alleged in paragraphs 10, 11 and 12 of the bill, to introduce Dr. Cyrus Teed and his Koroshan Society into the Harmony Society is wholly unsupported by any evidence in the case. No one testified to anything which would justify such a charge. It is denied under oath by Duss and every member of the society in their answer. It is denied by Duss under oath on the stand. Not a single witness is called by the plaintiffs to substantiate it. Even Henry Feucht could not swear to it. And the plaintiffs who made the affidavit to the bill admit that they had no personal knowledge whatever as to the truth of such averments.

It is not true that Duss had been, as alleged in the bill, (paragraph 10) a mendicant or servant * * without visible means of support. On the contrary, he had left the society in 1879 to go to college, had gone out West to Kansas, was employed as a teacher, and subsequently bought a farm, and, at the request of Mr. Henrici, in 1889, he returned to Economy.

It is not true that Mr. Duss, by intrigue, had his mother appointed as the housekeeper of Father Henrici.

It is not true that Duss, prior to his coming to Economy, was the

> "friend and confederate of Dr. Cyrus Teed, a notorious libertine and adventurer, now located in Chicago."

It is not true that Duss sent large sums of money of the Harmony Society to Teed, or that he, from time to time, clandestinely admitted into the town of Economy certain friends of said Teed,

> "among them one Turner Silverfield and a notorious female passing under the assumed name of Miss Emertz."

It is not true that Duss declared,

> "that Teed was the true Messiah and that his doctrines were true."

It is not true that Duss was enabled to, and did appropriate certain valuable and sacred vestments, formerly belonging to Father Rapp, and sent them to Teed.

It is not true that Duss caused to be erected a large and expensive residence in Economy for Teed and the Koroshan Society.

There is no evidence whatever to support these outrageous calumnies and slanders against Mr. Duss, and the testimony in the case is entirely barren of any cause whatever which should have moved a prudent man to make any such charges in his bill in equity.

Besides, as the bill itself alleges, this first plot was unsuccessful and abandoned.

Why was it introduced into the bill?

What the Koroshan Society is, what its practices, what its belief, there is not one word of testimony to show.

And yet, a main part of the plaintiffs' case has been the reiteration that it is a free love society, its house a brothel, and the female members prostitutes.

Second Plot:

(A) *The allegation that Duss, Hice and Reeves illegally combined to pay the debts of the Economy Savings Bank.*

The Economy Savings Bank was a partnership entered into between Judge Hice, Henry Reeves and the Harmony Society through Henrici and Lenz, trustees. The original agreement is dated March 2, 1868, and is in evidence as "Exhibit 48." Being partners in this bank the Harmony Society was liable for its total debts.

Duss had nothing whatever to do with the creation of these debts, and it was not until July, 1890, that he was elected junior trustee, and in the fall of the year 1891 that he discovered that the bank debts exceeded one million dollars ($1,000,000), and that the bank was insolvent. The conduct of Feucht, in stirring up strife in the society, caused rumors to circulate derogatory to its financial standing, and the result was a steady withdrawal of money from the Economy Savings Bank, which steady withdrawal was hastened into a

panic on February 10, 1893, caused by the filing of the Feucht bill against the Economy Society in the Common Pleas of Beaver County.

The trustees of the Harmony Society, as partners, were liable to be sued and held liable for all the debts of the Economy Savings Bank, and it was imperative upon Duss and his co-trustee, in order to save some of the assets of the society to pay some of those debts and prevent ruinous litigation, and perhaps the sale by the sheriff of the property of the society.

Hice and Reeves were unable to pay their share, and Judge Hice, (Record, Vol. II, p. 770), gives his reason, and John Reeves, (Record, Vol. II½, p. 9), gives his reason why each hold and asserts that he is not indebted to the Harmony Society.

(B) *Four Hundred Thousand Dollar Mortgage ($400,000.00).*

Mr. Brooks, (Record, Vol. II, p. 635), Mr. Dickson, (Record, Vol. III, p. 269), and Duss explain in detail the awful financial condition of the Economy Society when Mr. Duss was elected a Junior Trustree. Practically, all of its assets were pledged for its quickly maturing debts, evidenced by notes in different banks, and which aggregated over $1,300,000; temporary loans through Mr. Brooks' assistance had been made; stocks had been sold; and every method of meeting the overwhelming debt of the Harmony Society, which then aggregated some fifteen hundred thousand dollars ($1,500,000), was made by Mr. Duss, until it became imperatively necessary that a large loan on long time should be made, which would give him ample time

to realize full value from the assets and pay off without loss by depreciated sales the debts of the society. Mr. Duss at first wanted a long loan or mortage of $800,000. Mr. Brooks said this was impossible to obtain, and finally, by Mr. Brooks' personal solicitations, first, a loan of $102,000 was obtained, and later, a loan of $400,000 from Harry Darlington, trustee under J. N. McCullough's will, was arranged for, to secure which latter the mortgage in question was given. The time was five years, with the right to anticipate.

That this loan was made for any other purpose than that stated is wholly unsupported by any evidence in the case. It is malignantly and falsely malicious to say that Duss, Hice and Reeves intended to use this mortgage to sell the property and purchase it for themselves, and dismember the society.

It is maliciously and gratuitously slanderous and libelous to make such an assertion. There is no evidence to support it, and Duss, Hice and Reeves all swear to the contrary.

The mortgage was given as a necessary financial provision to meet the then emergencies of the society. Every member of the society, except the Feuchts, expressly agreed by a writing, dated December 20, 1892, a copy of which is annexed to the answer as Exhibit G, to the execution of this mortgage.

It is not true that Mr. Henrici was *in extremis*, and was not cognizant of its contents. On the contrary, the testimony of Mr. Brooks, (Record, vol. III, p. 162), Mr. Duss, (page 2638), and 'Squire Breitenstein show that Mr. Henrici was perfectly rational and fully competent to execute the mortgage.

See also Judge Hice, (Record, vol. II, pp. 724, 725).

Agreement of 1892.

Power to borrow money as given not only under the agreement of 1847, but expressly ratified and confirmed by those of 1890 and 1892.

(C) *One hundred thousand dollar mortgage—$100,000.*

This was given, and money borrowed, in June, 1893. It will be remembered that Mr. Duss originally wanted $800,000.00, but only secured $400,000.00. We were in, or threatened with, a panic; and Mr. Duss, (Record, vol. II, p. 843, 844; vol. III, p. 509), explains the purpose of the loan.

It has since been paid off.

(D) *Sale of the dividend-paying stocks, amounting to $2,000,000.00, so the bill alleges, for Duss' unlawful purposes.*

What the stocks were the Harmony Society owned when Duss was elected junior trustee; how they were pledged for debts then existing; when and for what sold, and how the money was disposed of; is shown in that part of our brief on the financial condition of the society, and Mr. Dickson's statements.

See Exhibits 76, 77, 79.

The stocks were all sold for the highest obtainable prices, and the proceeds applied to the payment of debts.

(E) *That Duss, by fraud and misrepresentation induced members to withdraw, and by so doing drove out of the society its leading men.*

There is not one item of proof in support of this. Not one witness swears to it.

Of the withdrawing members, Henry Feucht, Julius Stickel, Samuel Siber and Moritz Fredericks were examined.

Neither Feucht nor Stickel pretended Duss induced either to withdraw, and Samuel Siber, (Record, vol. III, pp. 428, 429, 431, 432), and Moritz Fredericks, (Record, vol. II, pp. 589, 591), says Duss tried to persuade each to remain.

Not one single person who withdrew was called to prove this allegation—*not one*—though many are alive and could have been called.

Mr. Duss, (Record, vol. II, p. 849; vol. III, p. 520) explains his conduct as to each.

See also testimony of J. Twin Brooks, (Record, vol. II, pp. 646, 650), and Judge Hice, (Record, vol. II, p. 764; vol. III, p. 274).

Why did so many withdraw?

Because of the Feucht disturbance and litigation.

Just as Count De Leon, in 1831, caused internal dissension and trouble, Henry Feucht did in 1890, 1893.

Count De Leon caused 175 members to withdraw and get $125,000.00. Feucht 17 for about $75,000.00.

Not one single demand for membership has been made since Feucht's bill was filed, and this trouble arose.

Before that, in 1890, nineteen (19) joined, and afterwards three (3).

(F) *Secret arrangement by Duss with Hice and Reeves as to conveyance to Union Company.*

This has already been fully treated of. We refer to the testimony of

Mr. Brooks, Record, vol. II, pp. 644, 645; 694, 702;
Judge Hice, Record, vol. II, pp. 731, 732;
James Dickson, Record, vol. II, pp. 786, 791, 792;
John Reeves, Record, vol. III, pp. 235, 236;
Mr. Duss, Record, vol. II, pp. 877, 878, 897;

As to the property of the Harmony Society conveyed to the the Union Company, and what was not conveyed, see

Exhibit No. 90.

(G) *Duss forced withdrawals by cruel treatment.*

The case of Elizabeth Beck and of Moritz Fredericks are mentioned.

Mr. Duss had nothing to do with either of them, (Record, vol. III, pp. 536–538), and was actually opposed to the removal of Miss Beck. As to Fredericks, see Record, vol. II, p. 870.

Elizabeth Beck's case is shown by the testimony of Fredericka Mountz, page 1378 of type-written testimony, Dr. J. Y. Boyle, pages 2279, 2285 of type-written testimony; Christian Kolb, pages 730–735 of type-written testimony; Henry Feucht, pages ——, and Mary Naugle, pages 2271–2279 of type-written testimony; Louisa Scharf, 2285–2293 of type-written testimony.

There is absolutely no evidence of maltreatment of Mr. Fredericks. Feucht's testimony, page ——, is hearsay.

When Mr. Fredericks was on the stand, as a witness, he did not so testify.

(H.) (Paragraph 22.) *Duss is selling liquor without license and contrary to law.*

Even if this were true, it could have no application to this case; but it is not true, and there has been no evidence sustaining it.

Up until the time of the Brooks law, the society sold its own manufactured product, chiefly wine, and after that law was passed the society was advised that it could not sell its own product without a license. The result was, that the trustees applied for and obtained a wholesale license from the Quarter Sessions of Beaver County, and when that license expired the court refused to renew it, merely because it was not necessary. While the society had the license, and in order to help it to work off its large stock of wine, it bought and sold some whiskey.

As will be shown in another place, during the entire existence of the society it manufactured and sold whiskey, beer and wine down until the revenue laws, passed during the war; it then stopped the distillery, but it always manufactured and sold wine, and it always distributed wine and beer among its members.

(Paragraph 23.) *That the principle of equality has been abolished, and Duss lives in luxury and the other members squalor.*

The testimony of Henry Feucht and Julius Stickel in support of this charge has been referred to.

It does not prove the charge, even if what they say is true.

On the contrary, the following witnesses testify that this charge is wholly untrue, and that each member of the society is treated alike, and that no one receives more than another:

Henry Breitenstein, pages 1951–61, 1977–9 of type-written testimony.

Fredericka Muntz, page 1380 of type-written testimony.

W. H. Breitenstein, Record, vol. III, pp. 371–373; 376, 377.

Carolina Molt, Record, vol. III, pp. 455, 456.

Rudolph Waggoner, pages 2047, 2050 of type-written testimony.

John S. Duss, Record, vol. III, p. 538.

Not a single member of the society makes this objection.

(1) *Fredericka Kroll and Weggle.*

(Paragraph 24.) This is the most vicious and untruthful and malignant paragraph of the bill. It charges Mr. Duss with improper relations with his cousin, Miss Fredericka Kroll, a young girl of eighteen years of age. And when the plaintiffs who swore to the bill were examined, as they were on the stand, each answered that he had no personal knowledge of the truth of that charge.

The witnesses called in alleged support of this averment are Henry Feucht; who swore to declarations made by a third person, Schied, accusing Duss of intimacy with Fredericka Kroll. As said elsewhere, his evidence is wholly hearsay, and of the vilest character.

Weggle was the other witness to sustain this charge, and he testified to what was a plain palpable lie on its face: That he

discovered Mr. Duss and Miss Kroll in the parlor or public room of the Great House, in Economy, in a most compromising position, with the door open from the hall, and the windows with shades up. Through this room was a passage-way to and from the room of Father Henrici and the dining room. It was used as a passage-way, and much frequented. Weggle fixed definitely the time when he made this discovery as the month of August, 1891 (620 of type-written testimony). That the door was open, and he stood in the door watching them so long as it took him to count fifteen (626 of type-written testimony). It was in the evening after supper, between six and seven o'clock, and still light (623 of type-written testimony). That the girl said her name was Ricka Kroll (622 of type-written testimony); and that when Weggle made his presence known, the girl jumped from Duss' lap, and ran out of the room (620, 621 of type-written testimony), and then Duss talked with Weggle—said it was his cousin, and he was having some fun with her, and that Weggle should not mention it (621 of type-written testimony). He could give no description of the girl, her face, hair, size, or appearance (629, 630 of type-written testimony). Henry Feucht had sent for him (Weggle) and he went to Feucht's house and told him this story (634 of type-written testimony). Both doors in the room were wide open (630 of type-written testimony). He had lost two cases against the society (622 of type-written testimony).

This is so improbable on its face that it would require the strongest kind of corroborating proof to induce its belief. The case is not only barren of any corroborating proof, but the witness, Weggle, afterwards, on the stand, deliberately recanted, and stated that the whole story was false and utterly untrue, and that he never had seen Duss in a compromising

position with Fredericka Kroll, or any other woman (761–765 of type-written testimony).

The most conclusive answer was made to this testimony of Weggle's, entirely irrespective of Weggle's recantation.

In the first place, it was proven beyond question that Miss Kroll left Economy before August 1, 1891; that she settled her accounts at the store, and the books in which the entries were made show the date of July 27, 1891, (1165–1168, type-written testimony). The books are in evidence as Exhibits 45 and 46, and show her signature and her name and the entry made as to her account, July 27, 1891.

In addition to this, Barbara Laurent, formerly Sohn (1105, type-written testimony), testifies that she went to live in the Great House in July, 1891, and that Weggle's story was not true (1113, type-written testimony).

Magdalena Schurr was living at the Great House in 1891, and she says Ricka Kroll left in July, 1891, and that Barbara Sohn took her place, she says the Weggle story is not true (1129-1130, type-written testimony).

Charles Miiler lived in the Great House in 1891, and he says Weggle's story is not true (1194, type-written testimony).

Rudolph Waggoner was the bookkeeper for the society, and he corroborates Ricka Kroll's testimony as to the date when she left Economy (1192, 1193, type-written testimony).

Mrs. Emertz went away with Fredericka Kroll, and she testifies it was the latter part of July (1229, 1230, type-written testimony). That she talked with Henrici, who approved of her going to Teed's.

Fredericka Kroll indignantly denies, under oath, the truth of Weggle's story (1165, etc., type-written testimony). She says Henrici knew where she was going, and told her to go.

It was sought to contradict Miss Kroll, and to show that she must have left Economy in August instead of in July. A letter dated Chicago, August 27, 1891, is introduced. Miss Kroll's testimony on this and the letter itself show that there is no contradiction, and that her language in the letter as to the fact that she had already been in Chicago three weeks was not intended to be precise and definite as to time. Certainly an indefinite expression of this kind could not be held to overcome the testimony of the numerous witnesses called in this case to show that Miss Kroll did leave Economy before August, 1891.

John S. Duss, under oath, also denies the charge. See his evidence —— page.

Testimony of Christian Kroll, (646.)

This leaves the charge against Mr. Duss of improper relations with Fredericka Kroll as one of the basest and most cruel calumnies and libels that could be made against a man and against an innocent girl, and parties to a litigation who would descend to such baseness unmistakably stamp the character of their suit.

The only other evidence as to immorality on the part of Mr. Duss is the testimony of John McNamee, which it is attempted to torture into a charge of impropriety.

McNamee is one of the claimants, and he says that when he was at Economy, on November 30, 1893, with one Cap-

tain Siebold, he saw Duss sitting in a room with a girl on his lap, and he saw this looking through the window from the street (658, type-written testimony).

Captain Seibold, who was with him, says that this is not correct, and that there was not a girl sitting on Duss' lap, but on the lounge along side of him (1200, type-written testimony).

This testimony does not conflict with that of Mr. Duss. Siebold does not attempt to testify as to the location, and Mr. Duss says that he was not within a half a square of that end of the house when McNamee claims to have seen him with the girl on his lap.

Mr. Duss, himself, in McNamee's presence, down at the Great House, demonstated that McNamee was mistaken, and that if he, McNamee, had seen what he said he saw, on the evening of November 30, 1893, he would have had to look through two brick walls and a wooden partition to do so. Mr. Duss also, under oath, denies the truth of that story.

See his evidence, page —.

OTHER QUESTIONS.

There were several isolated allegations of the plaintiffs' which are hardly necessary to be dwelt upon here—a full consideration of which the court can see in the master's report.

Among these are the life insurance policies of Mr. Duss, and what was called the Feucht settlement, where he signed a paper exonerating Mr. Duss.

See, also, the appellant's complaint that the Harmony Society does not now run a store, keep a tavern, have a shoemaker, a tailor, a silk factory, a cooper or a carpenter, as the society did when its members ran into the hundreds, as it would be foolish to do with a membership of ten.

The reply from Mr. Duss's standpoint is that, when he was elected as junior trustee, the society was almost bankrupt, and that, upon investigation, he discovered that it cost, for several years prior to 1892, under Mr. Henrici's management as trustee, $100,000 more per year to keep up and support Economy, the town where the society was located, than the total income of the society.

See, as the evidence on this:

Hice, (Record, vol. III, p. 215).
Brooks, (Record, vol. III, p. 158).
Duss, (Record, vol. III, p. 525).

For the last nine months of 1892 it cost, to run Economy, $74,300 more than the income of the society, (Record, vol. III, p. 294).

Mr. Duss started in to economize, and with the following results for the next three years:

	Expenses.	*Income.*
1893—	$66,319.07	$46,244.46
1894—	45,618.56	28,490.05
1895—	49,719.02	28,490.03

The master's report gives at some length the facts in reference to this.

FINANCIAL STATEMENT.

Mr. Duss was elected Junior Trustee on the 28th day of July, 1890, (Record, vol. III, p. 554). He had, therefore, no connection whatever with the business management of the Harmony Society. He had not incurred a dollar of its indebtedness, and he was entirely ignorant of what the facts were connected with it. He was alarmed by receiving through the mails notices of the maturity of notes in different banks, and set himself to work to find out the facts. It was almost impossible to do this, because Mr. Henrici kept no books whatever, except a book to show the number of employees in the employment of the Harmony Society. There was no book showing the income of the society, or its debts, or what its property consisted of. It was only by the greatest exertions that Mr. Duss, about December, 1891, got an approximate idea of what the truth was, and, to his amazement, he then found out that the financial situation of the society was substantially this:

Harmony Society owed on notes rapidly maturing, including five mortgages,	$ 393,502 56
It owed on account of the Economy Savings Bank, which really were debts due on demand,	1,081,456 02
Making a total indebtedness of	$1,474,958 58

To meet this Mr. Duss found that the society had, of available assets, exclusive of real estate, $117,444.96.

The society had pledged as collateral with the banks stocks and bonds valued at $505,900.00 to secure the payment of loans aggregating $291,558.00.

He also found that the banks that held the notes were becoming uneasy, and desired reductions of the same as they respectively matured; that the withdrawals from the Economy Savings Bank, although by no means what then might be termed panicky, yet they were, to a considerable amount, and the bank had no assets from which to derive any considerable amount of money.

The bank's chief creditors were the two corporations, the Beaver Falls Cutlery Works and the Beaver Falls File Works, which owed it in the neighborhood of $500,000, and the stock in these two works was owned chiefly by the society, but, in part, by Judge Hice and Mr. Reeves.

In a manner, the details of which we give hereafter, Mr. Duss sold, as best he could, the stocks and bonds pledged as collateral; realized in each instance a fair price, and used the surplus to aid him in the Economy Savings Bank, and then, in addition, he borrowed, through Mr. J. Twin Brooks, the Second Vice President of the Pennsylvania Company, from the estate of J. N. McCullough, of which Mr. Brooks was one of the trustees and executors, and is the attorney, first the sum of $400,000 on a mortgage, and, afterwards, the sum of $100,000 on a mortgage.

The result of Mr. Duss' financiering is briefly stated in this way:

When he was appointed trustee the entire debt of the society was $1,474,958.58. It had all its personal property pledged as collateral, and its credit was becoming doubtful.

When this case was argued before Judge Acheson in the court below, in December, 1898, the total indebtedness of the society was $350,000.60. To meet this, the society had on hands, in personal assets, $570,397.06. The society also

owned lands at Economy assessed, for the purposes of taxation, at over $500,000.00.

Mr. Duss, in addition to accomplishing this, was forced by the Feuchts' litigation and controversy to pay out some sixty thousand dollars ($60,000) to retiring members.

It is no exaggeration to state that Mr. Duss saved the society from financial ruin. If it had not been for him, there would have been absolutely nothing for the plaintiff to have fought about, because the assets of the society would have been *nil.*

Given more in detail, the financial situation and the manner in which Mr. Duss met it, are as follows:

At the time Trustee Duss first became informed as to the financial status of the society (*i. e.,*) about December 1st, 1891, (see Record, vol. III, pp. 3, 4, 5, testimony of Duss, also Record, vol. III, pp. 505, 506, 556, 557; vol. II, pp. 897, 898,) he found that its indebtedness amounted in round numbers to about one and one-half millions of dollars (pages 60 and 61); that Henrici was borrowing money for everything he carried on, (Record, vol. III, pp. 5, 6,); that this debt was interest bearing to the extent of probably $60,000 per annum; that the society did not have revenues sufficient to pay the interest on this indebtedness, and that the deficiency was made up by borrowing more money (Record, vol. III, p. 7).

During 1891, Mr. Given, of the Farmers Deposit National Bank, complained about the collateral security which Mr. Henrici had deposited, and wanted additional security for loans advanced to Trustee Henrici (Record, vol. III, pp. 493,

494); that for this purpose the trustees had in course of preparation a second mortgage on the society's brick yard property when a sale of the P., C. & Y. R. R. stock was effected by Duss (Record, vol. III, p. 494).

Mr. Roseberg, of the Bank of Pittsburgh, also was dissatisfied; he complained and wanted his loans reduced (Record, vol. III, p. 494).

Other banks also held paper of the society, namely: The Iron and Glass Dollar Savings Bank, The Allegheny National, and The Monongahela National. Also, The Bank of America in New York (Record, vol. III, pp. 494, 495).

The bonds and stocks of the society were pledged as collateral for all these different loans (Record, vol. III, p. 495).

The indebtedness of the society to the Farmers Deposit National Bank, the Iron and Glass Dollar Savings Bank, and the Bank of Pittsburgh, was $325,550, as of December 31st, 1891, or January 1st, 1892, (see Record, vol. III, pp. 504, 552), (which latter explain a mistake in the date on former page); see also cross-examination, Record, vol. III, pp. 557, 558.

In 1891 the only available assets the society had were a portion of the Monongahela Water Company stock (and some Tenth Street Bridge stock which had been lost was found), and a small amount of stock in the P., Ft. W. & C. R. R., but which put together did not amount to more than $70,000. The Point Bridge stock, for instance, was tied up in an agreement pertaining to litigation pending between the bridge company and a traction company (Record, vol. III, pp. 121, 122); this stock was not a dividend paying stock (Record, vol. III, p. 123). The stock in the Chartiers Block Coal

Company (of which the society had $113,000 par value), was not a dividend paying stock (Record, vol. III, pp. 123, 124). The *L. S. M. R. R. Company's* stock (of which the society had $105,075 par value) had no market value; none had been sold in years, although there had been offers to sell (Record, vol. III, pp. 125, 126).

Arising out of the Economy savings institution was an indebtedness to the State Treasurer of $163,000, a particularly dangerous one (Record, vol. III, pp. 497, 498).

That among the society's holdings were some P., C. & Y. R. R. stocks and bonds, but they were not negotiable; the company had defaulted on the interest on the bonds, and paid no dividend on the stock, and there was no market for them. Henrici said he had sunk $500,000.00 in this enterprise (Record, vol. III, pp. 499–501). See also Record, vol. III, pp. 557, 558.

Thereupon Trustee Duss effected a sale of this P., C. & Y. interest in the winter of 1891-92 (Record, vol. III, pp. 499, 501, 555). This sale replenished the society's treasury some $330,000.00; *i. e.*, $94,000.00 for the stock, and some $240,000.00 for the bonds; also, quieted the banks (Record, vol. III, pp. 499–501); and also, enabled Trustee Duss to pay the $163,000.00 Economy savings institution debt to the State.

Trustee Duss, in the meantime, together with his co-trustee Henrici, instituted legal proceedings against certain parties (Davisons) for the recovery of large timber tracts in Warren and Forest counties, Pennsylvania, which had been practically donated away by Trustee Lenz. This resulted in a recovery of the land and lumber in dispute, (Record, vol. III, p. 501). This property was sold by Mr. Duss for the sum of $67,989.29. (See Dickson, Record, vol. III, pp. 286,

287, and Duss, Record, vol. III, pp. 501-520). Inasmuch as the society's lumber operations had not been profitable, (Record, vol. III, p. 521,) this was certainly a very good turn for the society.

The Economy savings institution debt, of considerably over a million dollars of deposit money, had been reduced, so that by January 1st, 1892, it was $960,646.00,(see testimony of Duss, (Record, vol. III, pp. 504, 505, 556, 557) that something like $100,000 had been paid into the Economy savings institution prior to Mr. Dickson's schedule); and that the amount was further reduced so that the schedule made for Mr. Brooks, (October, 1892), showed only something like $915,000.00.

Mr. Duss also, as trustee, purchased for the sum of $45,-000.00, Mr. Hartman's interest in the Union Drawn Steel Company, at Beaver Falls; (this was indirectly of considerable benefit to the society, inasmuch as it kept the works at Beaver Falls, where the society still held considerable real estate); he also entered into negotiations with certain gentlemen, and organized the Eclipse Bicycle Company, paying into said company's treasurer the sum of $10,000.00. He sold the Union Drawn Steel Company interest and the Eclipse Bicycle Company interest at $50,000.00 and $15,-000.00 respectively, (Record, vol. III, pp. 502, 503). The result of these ventures was a profit of $10,000.00 in cash, and the repairing of the old cutlery works, making them available for sale. The cutlery works were actually sold December 1st, 1895. (See Dickson's testimony, Record, vol. III, p. 346).

It must be remembered that at and prior to the time (December 1st, 1891) when Trustee Duss first became aware—

approximately—of the large indebtedness of the society, there was no system of books or accounts kept by the society or its trustees showing either the assets or the liabilities of the society, or the revenues and expenditures of the society. (See Wagner, page 2019, type-written testimony; Duss, Record, vol. III, pp. 488, 489; Dickson, Record, vol. III, pp. 269, 274, 275.)

Trustee Duss accordingly requested the senior trustee, Henrici, or Judge Hice—or both of them—to prepare a statement showing the financial condition of the society. This statement was prepared (Record, vol. III, p. 492), and Trustee Duss received it on the day it was signed, *i. e.*, April 1st, 1892 (Record, vol. III, p. 492). This paper is marked Exhibit 50, and is printed, page —— of Record.

In the meantime Mr. Duss had engaged Mr. James Dickson, an expert accountant of the city of Pittsburgh, to devise a system of bookkeeping for the Harmony Society, and Mr. Dickson began his work April 1st, 1892. (Dickson, Record, vol. III, p. 269; also, Duss, Record, vol. III, p. 492.) Exhibit No. 50, the statement prepared by Mr. Henrici, was put into the hands of Mr. Dickson (Record, vol. III, p. 287). This statement, substantially containing a list of the assets and liabilities of the society, was what Mr. Dickson terms (Record, vol. III, p. 287) "daylight" to him; until he saw this paper he had been "entirely in the dark."

Using the Henrici paper as a starter (Record, vol. III, p. 288), Mr. Dickson did devise a system of accounts for the Harmony Society, showing the society assets, its liabilities; also, the results of every department of its industries and operations in general.

See as to lumber business, Record, vol. III, p. 269, *et seq*; as to brick work, Record, vol. III, p. 274; as to different things at Economy, Record, vol. III, p. 276; as to mortgages, judgments, etc., Record, vol. III, p. 274; as to general system of accounts, in which all the business and results are grouped, Record, vol. III, pp. 276, 277.

The society's operations at Economy had been conducted in a manner entailing an annual loss of about $100,000, (see testimony of Hice, Record, vol. III, p. 214; Brooks, Record, vol. III, p. 158; Duss, Record, vol. III, p. 525). The system of accounts devised by Mr. Dickson proved that such was actually the case, inasmuch as the expense of maintenance of Economy for the last nine (9) months of 1892 (April 1st to December 31st), exceeded the income to the amount of $74,300. (Dickson, Record, vol. III, pp. 294, 295.)

During the administration of Trustee Duss changes were made, (such as cutting down the large number of laborers on the pay roll, and the payment of wages to those remaining by the day, and requiring them to provide their own furnishment), (Brooks, Record, vol. II, pp. 651, 652; Breitenstein, Record, vol. III, p. 372; Duss, Record, vol. III, p. 525), which brought about an improvement as follows:

For the year 1893, the expenses, $66,319.07; revenue, $46,244.46; maintenance, $20,074.46.

For the year 1894, the expenses, $45,618.56; revenue, $28,490.05; maintenance, $17,128.51.

For the year 1895, the expenses, $49,719.02; revenue, $28,490.03; maintenance, $16,978.99. (See Dickson, Record, vol. III, p. 313.)

The excess of expense over increase was $16,978.99 for the year 1895, as against $100,000.00 per annum before Duss' time, (see Hice, Record, vol. III, p. 214), and this is called "gross mismanagement"!!

Trustee Duss, to meet the demands on the society finances, (see Record, vol. III, pp. 5, 6, 7), in addition to certain sales of real estate, proceeded to make conversion of the assets enumerated in his answer to this bill, Record, vol. III, p. 8.

Extract from the answer of Trustee Duss, page 82:

> "The sale of those—meaning stocks and bonds—that have been sold has been made absolutely necessary by the pressing financial necessities of the society."
>
> "I have, in connection with my co-trustee, between April 1, 1891, and June 30th, 1894, sold for and applied to the purpose above mentioned the following stocks of the par value and for the price mentioned:"

Stocks, etc.	*Par Value.*	*Sales.*
Bank of Pittsburg,	$ 9,650 00	$ 19,300 00
Allegheny National Bank,	3,500 00	4,690 00
M. & M. National Bank,	8,900 00	13,327 75
Rochester National Bank,	5,000 00	6,140 00
P., Ft. W. & C. R. R. Co.,	2,700 00	4,412 12
Monongahela Water Co.,	129,250 00	152,773 83
Beaver Falls Bridge Co.,	27,000 00	27,000 00
Beaver Falls Gas Company,	41,700 00	25,020 00
The Tidioute Bridge Company,	19,300 00	6,433 33
Birmingham & 10th Street Bridge Company,	2,500 00	7,062 50
United Drawn Steel Company,	50,000 00	75,000 00
	$299,500 00	$341,159 53

Also the following bonds:

Chartiers Block Coal Company,	3,000 00	3,018 00
Point Bridge Company,	13,000 00	13,426 53
L. S. M. R. R. R. Company,	102,000 00	102,000 00
P. C. & Y. R. R. Company,	282,000 00	249,294 20
	$400,000 00	$367,738 73

All the while the Western File Works was still running at a loss of something like $500 per month (one of those Beaver Falls industries that, according to Trustee Henrici's policy, had been kept in operation)—but Trustee Duss finally succeeded in "choking it off" in the summer of 1892, and eventually sold the same for the sum of $61,000.00 and a right of way, or damage, payment from the P. & L. E. R. R., thus developing the sum of sixty-seven to sixty-eight thousand dollars (Record, vol. III, p. 522); see also Dickson, or to real estate item of $67,500.00 (Record, vol. III, p. 303).

The amount of money ($330,000.00) realized from the sale of the P., C. & Y. R. R. having been consumed through the payment of urgent creditors, notably the State Treasurer, the Economy Savings Institution, and on account of the losing operations at Economy, (see Record, vol. III, pp. 499, 500, and Record, vol. III, p. 556), the society in the Fall of 1892 was "again in bad shape." (Record, vol. III, pp. 499, 500.)

It was at this time (October, 1892) that Mr. Duss decided to consult Mr. J. T. Brooks, the general counsel of the Pennsylvania Company, and one of the trustees of the estate of the late J. N. McCullough, (Record, vol. III, p. 506; J. T. Brooks, Record, vol. II, p. 637).

Mr. Brooks testifies, (Record, vol. III, p. 148), (being asked to give approximate figures), that the society owed at that time on paper issued about $360,000.00.

Also, on a mortgage indebtedness, $30,000.00.

And through the Economy Savings Institution about $915,000.00; that the Economy Savings Institution owed a New York bank sixty or seventy thousand dollars, (Record, vol. III, p. 149), and that he (Brooks) secured an extension of the loan, promising personal responsibility for its ultimate payment (Record, vol. III, p. 149).

Trustee Duss, at the time he approached Mr. Brooks, wanted the sum of at least $800,000.00, with which to tide over the affairs of the society through the pending crisis (Record, vol. III, p. 507), arguing—very pertinently, too—that of this sum it would take $367,000.00 to pay the indebtedness to the banks, and that the Economy Savings Institution should also be provided for (Record, vol. III, p. 507).

Mr. Brooks thereupon succeeded in securing a temporary loan of $102,000 on November 2, 1892, from Mrs. McCullough, and this sum was used in paying the society's indebtedness in the Farmers' Deposit National Bank, thus releasing and making available for sale the various stocks and bonds said bank held as collateral security. (Dickson, Record, vol. III, p. 296; Duss, Record, vol. III, p. 507).

On December 21, 1892, a further loan was secured by Mr. Brooks for the society; namely, $400,000, secured by mortgage on some of the society's real estate. (Brooks, page 1416, type-written testimony; Duss, Record, vol. III, 508; Dickson, Record, vol. III, p. 296). This money was deposited in the current cash of the society, and used in paying its debts. (Dickson, page 1841, Record, vol. III, p. 296).

Trustee Duss states that one week after December 21, 1892, (page 2533), when the $400,000.00 loan was secured, the

$400,000.00 indebtedness to the Pittsburgh banks and the bank in New York (arising out of the indebtedness of the Economy Savings Institution), was all paid off; also, other debts of the Economy Savings Institution; also, mortgages on certain property of the society. (See Brooks, page 1417, type-written testimony).

Trustee Duss evidently forecasted the future when he wanted $800,000.00 with which to tide the affairs of the society "through the storm" (Record, vol. III, p. 507), the overwhelming indebtedness of the society and the internal troubles that were brewing—notably the strife caused by the conduct of Henry Feucht—must needs, sooner or later, reach the ears of the public, and precipitate a demand for the payment of its direct liabilities and a run (of 3,000 to 4,000 depositors) on the Economy Savings Institution.

The developments of the campaign along early in 1893 fully support the foregoing view.

Immediately after Mr. Henrici's death, (December 25, 1892), there appeared a threat in print that the Feucht faction were in consultation; that they were going to institute legal proceedings (Record, vol. III, p. 514). This threatened litigation made its appearance in the shape of the so-called "Feucht bill," filed in the Beaver Court February 10, 1893, (Duss, Record, vol. III, p 512); and the filing of said bill, which was published in the press of the day, pretty generally, created a run on the Economy Savings Institution, which almost closed the doors of said institution (Duss, Record, vol. III, p. 512; Dickson, Record, vol. III, p. 297; Reeves, Record, vol. III, p. 512; Hice, page).

During this pressing time it actually became necessary for Mr. Brooks to endorse, personally, notes in order to meet the

pressing obligations, which he did on February 13th or 14th, to the extent of $40,000.00 (see Brooks, Record, vol. III, p. 151; Duss, Record, vol. III, p. 511, when, as the latter says, they were "at the and of the string"). Mr. Brooks also effected another loan of $42,000.00 on May 5th, 1893, and also endorsed another note to the extent of $30,000.00 on May 25th, 1893, (Dickson, Record, vol. III, p. 297; Brooks, Record, vol. III, p. 151). In June, 1893, Mr. Brooks secured an additional $100,000.00 on a second mortgage for the purpose of further enabling the society to further protect its property and develop its unavailable assets, and paying the interest shortly to be due on the $400,000.00 mortgage loan. (See Dickson, Record, vol. III, pp. 297, 298; Brooks, Record, vol. II, p. 641; Duss, Record, vol. II, p. 858.

A summary of the transactions in detail, as between April 1st, 1892, and December 31st, 1895, are given in Mr. Dickson's testimony, and exhibits under said testimony in the case, and a careful compilation of the same shows the following:

TABLE I.

Statement of Assets of the Harmony Society as of April 1st, 1892.

Record, Vol. III, Pages.	Assets.	
284-5, 323.	Stock in Economy Savings Institution,	$ 360,000 00
284-5.	Other stocks,	545,700 00
284-5.	Bonds,	402,509 00
		$1,308,200 00
284-5.	Industrial factories, etc.,	320,503 52
		$1,628,703 52
284-5.	Economy items,	18,873 24
		$1,647,576 76
284-5.	Union Drawn Steel Co., loan,	18,750 00
284-5.	P., C. & Y. R. R., special,	18,466 89
		$1,684,793 65
	Also,	
284-5.	Beeler real estate contract,	3,000 00
284-5.	Beaver Falls contracts, mortgages and judgment,	127,805 17
284-5.	Myers mortgage,	28,922 25
284-5.	Deposit in Farmers Deposit Nat'l Bank,	2,623 46
		$1,847,144 53
	Also,	
284-5.	Economy Savings Institution, special,	28,895 33
284-5.	Beaver Falls Car Works, special,	26,431 70
284-5.	Economy Savings Institution, deposit balance,	62,117 93
	Nominal value,	$1,964,589 49

These values are nominal, no appraisement being made. They were simply entered at this amount to get them on the books.

Also,

Record, Vol. III., Pages.		
286.	Real estate,	Cannelton, Pa.
286.	"	McKees Rocks, Pa.
286.	"	Stowe township, Allegheny Co., Pa.
286.	"	32nd Ward, Pittsburgh.
286.	"	23rd Ward, Pittsburgh.
286.	"	Rochester, Pa.
286.	"	New Brighton, Pa.
286.	"	Collier Township, Allegheny Co., Pa.
286.	"	Economy Home Tract.
286.	"	Leet Township, Allegheny Co., Pa.
286.	"	Beaver Falls.
286.	"	Beaver Falls water power.
286.	"	Warren County land.
286.	"	Philadelphia real estate.

And their debts were:

280.	Bank of Pittsburgh, 4 Notes,	$142,000 00
280.	Farmers Deposit Nat'l Bank, 4 Notes,	60,600 00
280.	Iron and Glass Dollar Savings Bank, 5 Notes,	88,958 00
282.	Hartman Notes,	13,600 00
281.	Powell & Co.	1,874 75
282.	Valley Glass Notes,	4,000 00
		$311,032 75
	Economy Account,	2,685 90
281.	Five Mortgages,	35,350 55
282.	Economy Savings Institution Special,	39,383 36
	Little Saw Mill Run R. R.	50 00
280.	Monongahela National Bank,	5,000 00
		$393,502 56

From the foregoing statement it would seem that the society was in splendid condition; but when we take into consideration that the society was responsible, as before stated, for the indebtedness of the Economy Savings Institution, namely, $1,081,456.02 (Record, vol. III, p. 279) and furthermore sub-divide Table 1 into Tables 2 and 3, the complexion of the matter is changed entirely.

Industrials, etc.	*Nominal values.*	*Worthless and Unavailable.*	*Available.*
Beaver Falls Steel Works,	$263,098 14	$263,098 14	
Harmony Brick Works,	16,554 82	16,554 82	
Economy Lumber Company,	13,942 10	13,942 10	
Economy Planing Mill Company,	8,737 26	8,737 26	
Economy Oil Company,	4,500 00	4,500 00	
Economy Oil Company cash account	13,671 20	13,671 20	
Economy Sundries,	18,873 24	18,873 24	
P., C. & Y. R. R., Special,	18,466 89	18,466 89	
Union Drawn Steel Company Loan,	18,750 00	18,750 00	
	$376,593 65	$376,593 65	
Sundries.			
Beeler Contract,	$ 3,000 00	$ 3,000 00	
Beaver Falls Mortgages, etc.,	127,805 17	127,805 17	
Myers Mortgage,	28,922 25	28,922 25	
Deposit in Bank,	2,623 46		$2,623 46
	$162,350 88	$159,727 37	$2,623 46

Sundries.

Economy Savings Institution, Special	$ 28,895 33	$ 28,895 33
Beaver Falls Car Works	26,431 70	26,431 70
Economy Savings Bank Deposit	62,117 93	62,117 93
	$117,444 96	$117,444 96

The real estate, and also industrial and sundry items in Table 2, were of no immediate consequence, inasmuch as any move toward a conversion of the same would have aroused interest and suspicion on the part of the public, and would have brought about the disclosure of the ruinous condition of the society's financial credit, which, above all things, it was necessary to uphold, the only available item being the $2,623.46 deposit in the Farmers Deposit National Bank, mentioned in Table 2.

Special Statement of Securities Pledged by Harmony Society Held by Bank of Pittsburgh, April 1st, 1892. Explanation of the "Pledged" Column in Table 3.

Record, vol. III.

PAGE.		PAR.	LOAN.
288	150 bonds P., C. & Y. R. R.	$ 75,000	
288	406 shares stock Beaver Falls Gas Co. $100	40,600	$142,000
288	240 shares stock Beaver Falls Bridge Co. $100	24,000	
288	Bonds Little Saw Mill Run R. R.	12,000	
288	Bonds Little Saw Mill Run R. R.	12 00 0	

Held by the Iron and Glass Dollar Savings Bank.

289	3,650 shares Monongahela Water Stock. $25.	89,000	88,958

Farmers Deposit National Bank.

289	178 shares M. & M National Bank. $50.	8,900	
289	78 shares Allegheny National Bank. $50.	3,500	60,600
289	Bonds Little Sawmill Run R. R. Co.	12,500	
289	Bonds P., C. & Y. R. R.	32,500	
289	Second Point Bridge.	13,000	
		$323,000	$291,558
289	P., C. & Y., State of Pennsylvania.	100,900	
289			
289	Little Saw Mill Run R. R. Bank of N. Y.	82,000	
	Grand total.	$505,900	

Besides the foregoing pledges, the Bank of Pittsburgh held 193 shares of Bank of Pittsburgh stock of the par value of $9,650.00 as applicable in general to the loan made to the society. (See Dickson, Record, vol. III, page 290; Duss, Record, vol. III, page 494.)

Statement of the Harmony Society's Securities (Exclusive of Real Estate) their Disposition and Value as of April 1st, 1892.

Shares.	Stocks.	Par Value.	Record, vol. III. Page.	Pledges.	Otherwise Worthless or Unavailable.	Page.	Available.	Page.
	E. S. Bank.....	360,000	290		360,000	1899		
600	Point Bridge.....	15,000	"		15,000	885–7		
386	Tidiout Bridge.....	19,300	"		19,300	1835		
2271	C. B. Coal Co.....	113,550	"		113,550	888 & 1834		
2100	L. S. M. R. R. Co...	105,075	"		105,075	1834		
	Glens'w Oil Co.....	3,000	284		3,000	1822		
500	U. Draw. Steel Co..	50,000	290				50,000	1831
417	B. Falls Gas Co.....	41,700	288	40,600			1,100	1831
483	10th St. Bridge.....	12,075					12,075	1822
70	A. Nat. Bank.....	3,500	289	3,500				
193	B. of Pgh.....	9,650	290	9,650				
270	B. Falls B. Co.... ..	27,000	288	24,000			3,000	1831
178	M. & M. Bk.....	8,900	289	8,900				
27	P.F.W. & C R.R.Co.	2,700					2,700	1831
50	Roc. Nat. Bk.....	5,000					5,000	1831
5170	Mon. Water Co.....	129,250	289	89,000			40,250	1831
	BONDS.							
	C. B. Coal Co.....	3,000					3,000	1822
	Point Bridge...	13,000	289	13,000				
	P. C. & Y. R. R. Co.	276,000	288	75,000	67,600	1829		
			289	32,500				
			289	100,900				
	L. S. M. R. R. R. Co.	110,500	288	12,000	2,000			
			"	12,000				
			289	12,500				
			289	82,000				
	L. S. M. R. R. R. Co.	10,000						
		1,318,200		515,550	685,525		117,125	

The society's liabilities of January 1st, 1896, are $359,812.74 (Duss, Record, vol. III, p. 519; Dickson, Record, vol. III, p. 304,) of which $350,000 was balance due on Darlington-McCullough mortgage, (Record, vol. III, p. 304,) and assets same date exclusive of Economy and Michigan real estate was $570,397.90 (see Dickson, Record, vol. III, p. 308, and Duss, Record, vol. III, p. 519) who testifies that Economy was assessed at $581,457 and Michigan land was worth $10,000.

SCHEDULE "A."

Bills receivable, bank,	$ 87,000 00
Mortgages, bank,	15,000 00
J. T. Reeves & Co., bank,	431 34
Mortgages, judgments and contracts Harmony Society,	40,964 08
Other mortgages Harmony Society,	35,078 06
Accounts and bills receivable, Harmony Society,	22,387 61
Economy items Harmony Society,	21,991 49
Farmers Deposit National Bank, Harmony Society,	9,169 47
Stocks, Harmony Society,	
Chartiers Block Coal Company, Harmony Society,	113,500 00
Point Bridge Company, Harmony Society,	15,000 00
Sundries, Harmony Society,	6,150 00
Sundry real estate items, Harmony Society,	3,766 01
Rochester real estate, Union Company,	3,000 00
New Brighton real estate, Union Company	2,500 00
Leet Township real estate, Union Company,	100,000 00
Sewickley real estate, " "	11,500 00
Beaver Falls real estate, " "	82,959 00
	$570,397 06

TABLE 4.

The entire resources of the society and Economy Savings Institution Bank as of April 1st, 1892, were as follows:

Personal items society, nominal values,		$1,964,589 49
Bank assets, unknown value.		
Society's real estate, unknown value.		
Society's debt,	$ 393,502 56	
Economy's Savings Institution Bank debt,	1,081,456 02	
	$1,474,958 58	

And at that date Trustee Duss had within his reach assets not exceeding $120,000, as follows:

Union Drawn Steel Works, see table 3, par,	$ 50,000 00
Beaver Falls gas stock, see table 3, par,	1,100 00
Tenth street bridge stock, see table 3, par	12,075 00
Beaver Falls bridge stock, see table 3,	3,000 00
P., F. W. & C. R. R. stock, see table 3,	2,700 00
Rochester National Bank stock, see table 3	5,000 00
Monongahela Water Co. stock, see table 3,	40,250 00
Chartiers Black Coal Co, bonds, see table 3,	3,000 00
Cash in Farmers Dep't Nat'l Bank, see table 2,	2,623 46
	$119,748 46

The general statement being as follows:

Personal assets,		$1,964,589 46
Deducting pledged items,	$ 505,900 00	
Deducting unavailable and worthless items,	1,338,941 03	
		1,844,811 03
		$ 119,748 46

$119,748.46 represents therefore the available securities on hand April 1st, 1892.

This item very strongly supports the testimony of Trustee Duss that the society in the fall of 1891 had what amounted to not over $70,000 worth of available assets.

The efforts of Trustee Duss in liquidating the indebtedness of the society which occupied his attention from 1891 up to the date of these reports, December 31st, 1895, required unceasing care and industry.

It is difficult to find language forcible enough to portray the anxiety and troubles through which he passed, to carry out honestly and faithfully the duties of his trust.

Commencing in 1891 he found that utter confusion reigned supreme in the society's business affairs; vast business interests extending from Tidioute to Beaver Falls—complex and varied—farming, manufacturing, banking and a peculiar condition resulting from the society's affairs being administered for many years by Trustee Henrici, who by virtue of his position as senior trustee and spiritual leader, coupled with his indomitable will, managed things according to his own personal ideas.

He was for twenty years prior to his death an old man, having absolute power to do business in his own way without reducing business transactions to record in books of account.

Trustee Duss found tremendous liabilities, amounting to one and a half million dollars ($1,500,000), staring him in the face, and nearly all the sooiety's securities beyond his control, they having been pledged for part of the debt.

He commenced his task with not over $70,000 within his reach.

Of the liabilities, $393,000 were held by three banks in Pittsburgh, who had often renewed the notes, and who were dissatisfied with their collateral and wanted their money.

The debt of the bank in Beaver Falls was due to a very large number of depositors, and nearly all subject to call. The situation was frightful, and it was only by the kindly assistance of Mr. Brooks, who procured loans on long time, that overwhelming disaster was averted.

With the proceeds of these loans debts were paid and securities were realized upon, but new trouble arose, as any attempt to throw these stocks and bonds upon the market would certainly break the price, and the disposing of these items took a long time, but finally resulted in sales being effected at fair prices.

Many of the assets which proved finally available were of such a character that purchasers could only be found after patient effort and often long waiting.

A noted instance in this direction was the stock of the Little Saw Mill Run Railroad, which was sold at par, $110,500, in July, 1895, and until that date could not be sold at any price.

And also the stock and bonds of the Pittsburgh, Chartiers & Youghiogheny Railroad Company, which in 1891 were utterly without market price or value; the stock and bonds were finally disposed of for more than $330,000.

It took time to bring about these transformations. Meanwhile the current business and industries of the society independent of its debts were continued. *Result:* The debts, which were $1,500,000, are now only $356,000; the net maintenance of Economy, which formerly was in round numbers

$100,000 per annum, was in 1895 only $16,879, and the remaining assets were and are being developed, (as, for instance, the stock of the Chartiers Block Coal Company, of which the society holds a large block, and which is now worth its par value, viz., $113,000).

The transactions of the society are now regularly recorded upon proper books of account, and full information of its affairs is readily obtainable. (For tabulation of the society's affairs January 1st, 1896, see schedule "A," which schedule, exclusive of Point Bridge stock, shows actual values, see testimony of Duss, Record, vol. III, p. 519).

These results have been accomplished under the most trying circumstances, arising from internal dissensions in the society, created and fostered by some of the members who have since withdrawn, as well as by enemies without the society, greatly embarrassing Trustee Duss in almost every attempt he made, heaping contumely and personal abuse upon him, both in public and private; instituting vexatious litigations, clouding the title of the society to all its assets, and creating suspicion on the part of the public and financial institutions against his management, and this, too, throughout a season of the severest financial distress this country has ever known.

POWER OF TRUSTEES.

Down until 1847 the agreements of the society do not speak of or determine what the industries of the society shall be. That there were to be external industries which should bring a profit to the society is evident from the history of the organization down to his date. The society was to make money for the support, maintenance and education of its members, and to do this it had to engage in business.

What the business was in which it would be engaged is not determined by the articles or agreement or any of them.

This was, in the first place, left to the discretion of the patriarch, George Rapp, under the patriarchial form of government, and to Frederick Rapp, his adopted son, who was appointed general agent of the society to transact its external business.

When Frederick Rapp died, in 1834, and it became necessary to appoint his successor, George Rapp, being the patriarch, was also appointed the general agent by an agreement dated July 5th, 1834, and signed by all the then members, and recorded in the Recorder's office of Beaver County on August 7th, 1834, in Deed Book L, page 577.

This paper, which is in evidence as Exhibit No 85, recited that Frederick Rapp

> "was for a series of years the agent in temporal affairs of the Harmonie Society, carrying on in his own name *all the external business of said society* and taking to himself the titles to real estate, as well as the evidence of claim arising out of the *various transactions of said society.*"

Now, on account of the death of the said Frederick Rapp, the Harmony Society

> "Do hereby nominate and appoint George Rapp, of Economy, in the county of Beaver, the general agent of said society in all its temporal affairs."

Then follows an enumeration of the powers, which are quite broad, and which, among others, are as follows:

> "To carry on by himself, or through the agents whom he is hereinafter authorized to appoint, all the dealings and traffic of said society of every description."

When George Rapp died in 1847, the agreement of August 12th, 1847, was made and executed by all the members of the society, and among other provisions were the following:

> "*Article 4th.* We do further ordain and establish a Board of Trustees for the exclusive management of the external business and affairs of the society, which board shall consist of two persons, who shall be members of the Board of Elders, and their successors, who shall be appointed as hereinbefore provided. Romelius L. Baker and Jacob Henrici shall be the first Board of Trustees.
>
> "*Article 5th.* The said trustees shall jointly and severally have and exercise the powers following, to-wit:
>
> "1st. In their own names or that of either of them, or otherwise, to purchase and sell, deal, barter, exchange and traffic, make all contracts and bargains, in the prosecution of the business, to invest the funds in stocks and other securities, and make transfers and assignments, to collect debts, receive and pay out moneys, settle claims, compromise disputes, institute legal proceedings, appoint and dismiss agents, clerks and attorneys in fact, and at law, and generally to transact all the external business affairs of the society.
>
> * * * * * *

> "5th. The powers hereby vested in the said trustees shall extend to and embrace all the property of said society, real, personal or mixed, whether standing or held in the name of the late Frederick Rapp, the said George Rapp, or in any other name or form whatsoever."

The things which these trustees were to do under this article, were, in its own language, as follows, to have—

> "the exclusive management of the external business and affairs of the society."

There is no limitation to this. It is all the external business. All the external affairs of the society. Every kind of business is within the scope of the words—whether it be the manufacture and sale of whiskey, or silk, or beer, or cutlery, or iron, or steel; or the digging, sale and transportation of coal; or the building of railroads, or the running of a bank.

Each one is business. Each one is part of the external business and affairs of the society, and the trustees engaged in it.

And so, the 5th paragraph of the bill still further enlarges —if that were possible—the powers of the trustees.

Under the previous language, perhaps, the powers of the trustees were joint, and not several; and now comes the 5th paragraph and makes the powers joint and several, and each of the trustees had the power of both of them.

They might in their own names (not in the names of their principal), or that of either of them,

> "or otherwise,"

do what?

Look at the powers—

Purchase;

Sell;

Barter;

Exchange and traffic;

Make all contracts and bargains in the prosecution of the business;

Invest the funds in stocks and other securities.

Make transfers and assignments;

Collect debts, receive and pay out moneys;

Settle claims;

Compromise disputes;

Institute legal proceedings;

Appoint and dismiss agents, clerks and attorneys in fact and at law;

"And generally to transact all the external business affairs of the society."

What possible external business was it which the trustees might not legitimately carry on under these delegated powers?

Could anything have been broader?

Then, according to the fifth portion of this 5th Article, the entire property of this society is subjected to this board and its unconfined powers.

If there could be a question as to what fell within this power given to the trustees to carry on business, the history of the Harmony Society for the last fifty (50) years would be a conclusive answer to the objection now taken—that the outside industries, in which Henrici and Lenz invested the money of the society, and especially the Economy Savings Bank, were beyond the powers of the society.

Judge Hice's recollection goes back further with particularity, perhaps, than any other witness, and beginning on page 1530 and running to page 1559 of type-written testimony, he gives the different external business enterprises and affairs in which the society was engaged, and they included, beginning with the year 1858, the following enterprises:

Grist mill;

Saw mill;

Various mechanical pursuits, as tailoring and shoemaking.

They were also engaged in manufacturing

Silks;

Cottons;

Woolen goods.

They were interested in and connected with the mining of coal and operating the coal mines at Cannelton, Beaver county. They had interests there in connection with John White, and they mined coal and shipped it over what was known as the Darlington & Cannelton Railroad to New Galilee.

They shipped their coal mostly east; some to Cleveland, and some to New York (Record, vol. II, pp. 707, 708).

Here you find the trustees engaged in a joint enterprise in 1858, which had then been going on for some time.

They were also largely engaged in the manufacture of oil from shale, and they refined it at Cannelton.

In 1860, after the discovery of oil up the Allegheny, they were engaged in the producing of oil there. That commenced in 1861, and was carried on in a very large way.

They were also largely engaged in the lumber business, and had large and valuable pine and other lumber tracts. They had a large sawmill up the river, and rafted the lumber down the Ohio river.

In 1859 the society bought five hundred (500) acres of land at Beaver Falls, and cut it up into lots and sold it, and they had continued that business ever since; upon that tract is located the town of Beaver Falls. It then had 40 or 50 people, and it now has a population of between 9,000 and 10,000.

They bought additional farms, and laid them out in lots.

In 1867 the trustees became interested in the cutlery business at Beaver Falls, in connection with Mr. Hussey and Mr. Howe, of this city, and Mr. Binns and Mr. Brown (Record, vol. II, p. 711.)

In 1868 they formed a corporation out of the partnership, and in 1870 and 1872 the society bought out the interest of Hussey, Binns, Howe and Brown.

The trustees were also engaged in Beaver Falls in the manufacture of pocket and table cutlery. In 1872 Mr. Henrici bought out the other parties interested in that works and

then sold a portion of the interest to Judge Hice and Mr. Reeves.

Mr. Henrici insisted on carrying on the cutlery and file works in order to benefit the sale of lots (Record, vol. II, pp. 712, 713.)

The file works were started by Foshey and Fessenden in 1869, and in 1875 a limited partnership was formed, in which the trustees, Henrici and Lenz, became partners (Record, vol. II, p. 714). This continued until 1884, when Henrici bought out the interest of Fessenden and Foshey.

The Economy Savings Bank was instituted in the year 1868. The original articles of partnership are in evidence as Exhibit 48, and it was organized

> "for the purpose of carrying on the banking business in Beaver Falls." (Record, vol. II, p. 715.)

As its name —"Economy"—designated, it was known to be the bank of the Harmony Society, or Economy. It grew with the growth of Beaver Falls, and was carried on until it closed in 1893. It received deposits generally and largely, and at one time had upwards of 3,000 depositors. It had, from time to time, made and declared and divided dividends, but owing to the policy insisted on by Mr. Henrici—that the Savings Bank should furnish all the money necessary for the cutlery works and the file works, other enterprises of the Harmony Society—the Savings Bank was ruined.

The trustees were also engaged in the glass business at Beaver Falls. It was first carried on in the name of C. G. Modes & Company, and later, probably, in the name of the Trustees. (Record, vol. II, p. 718.)

The trustees also had a saw mill at Cannelton, in connection with the mining and railroading there, and carried on a sort of a car shop there, and built and repaired cars, (Record, vol. II, p. 718).

They also had a saw mill at Economy. Also a planing mill at Economy.

They were also engaged in the coal business at Saw Mill Run, opposite Pittsburgh, the coal mines being at Bankville, and they mined and ran the coal down to the river and shipped it, and also shipped by railroad.

They are also largely interested in the Chartiers Block Coal Company.

They built, or largely aided the building of the Pittsburgh, Chartiers & Youghiogheny railroad, which connected with the works of the Chartiers Block Coal Company. They had 7,000 shares of stock of the par value of $50.00 each.

They were interested with Mr. Waterbury in the extraction of oil from shale; they had quite a large interest, and had, as partners in the business, a man by the name of Crum and Oliver P. Scaife (Record, vol. III, p. 170).

They also carried on the glass business in Bridgewater, in 1857 and 1858 (Record, vol. III, p. 171).

They also carried on a distillery and a brewery.

They also invested largely in the Pittsburg & Lake Erie Railroad Company, having at one time an interest there amounting to $400,000.

They also engaged in the manufacture of steel at Beaver Falls, buying out the firm of Able & Pedder, and ran that works from 1877 to 1893.

They also engaged in the manufacture of axes at Beaver Falls, and carried it on quite largely (Record, vol. II, p. 720).

They established the Beaver Falls Car Works for the manufacture of cars and carried on the business largely.

They engaged in the manufacture and sale of bricks quite largely.

They were interested in the limited partnership of H. M. Meyers & Co. in the manufacture of shovels.

They were engaged in the manufacture of trusses.

They were also engaged in the coal works at Beaver Falls known as the Beaver Falls Coal Works.

They also carried on the dairy business at Economy.

They also were interested in the Union Drawn Steel Company, (Record, vol. III, p. 176).

They were interested in the Little Saw Mill Run Railroad, (Record, vol. III, p. 184).

Also, in the Pittsburgh Southern Railway Company, (Record, vol. III, pp. 191, 192).

The practical construction by the trustees of the society, then, from the earliest date at which we have any information, is, that the trustees had the power to engage in any outside industry they saw fit, and they did engage in it just as they saw fit, and to any extent they saw fit, and not a single member of the Harmony Society has ever been heard to say that the power of the trustees was limited as to outside business.

They carried on the banking business from 1868 to 1892. On the faith of their credit a debt of over a million of dollars was created. It is incredible that they could be allowed to set up—as the heirs of some deceased member now allege—that this debt was invalid, and the trustees could escape payment of it.

Even if there was any doubt about the power under the wording of the agreement of 1847, the agreement of 1890, signed by all the then members, including all the Feuchts even, expressly ratified and approved all that the Board of Trustees had prior to that time done. The following quotations from that article are pertinent:

> "*And Whereas*, Said society, and the undersigned, the present members thereof, have received and enjoyed, and do now enjoy, the benefits and advantages resulting from the management and regulation of the internal affairs thereof by the Board of Elders as aforesaid, as also the benefits and profit of the external business and affairs thereof, managed and transacted by those who constituted the Board of Trustees as aforesaid, and it is deemed right and proper that we, the undersigned surviving members of the society, who entered into the articles and compact aforesaid, and the others who have since become members as aforesaid, should recognize, approve and reaffirm said articles, and approve and confirm what has been done for and on behalf of the society, under and in pursuance thereof."

> "*Now, Therefore*, Be it known to whom it may concern that we, the undersigned, the surviving and present members of the Harmony Society, at Economy, aforesaid and all the present members of said society, do severally, and each for himself, covenant, grant and agree to and with the others, and each and all the other members aforesaid, and signers hereof and with those who shall hereafter become members, as follows, that is to say:"

* * * * * * *

"3d. We do also hereby approve, ratify and confirm all acts, matters and things done, transacted and performed by the Board of Trustees of the Harmony Society, constituted, first of Romelius L. Baker and Jacob Henrici, until January 11th, 1868, afterwards, and from that date until January 21st, 1890, of Jacob Henrici and Johnathan Lenz, and since the last mentioned date, of Jacob Henrici and Ernest Woelfel, hereby ratifying, confirming, holding, declaring as good and effectual in law and in equity, all acts, matters and things done, transacted and performed by each and all of said trustees, in the purchase and sale of personal property, and in the making of contracts, investment of funds, purchase, sale and transfer of stocks, bonds and other securities, loaning or borrowing money, collection and payment of moneys, settlement or compromise of claims or disputes, in the institution and prosecution of legal proceedings, in the employment and discharge of attorneys in fact, and at law, in the making of donations, in the purchase of real estate, and in the sale thereof, in the execution and delivery of deeds, conveyances, transfers and assignments, whether of and pertaining to real or personal estate, in the execution or delivery of notes or obligations of any kind, and generally all acts heretofore done by said trustees, in the conducting, managing and transacting of the business of the society, and whether done by said trustees, or either of them, severally and in his own name as trustee, or jointly in the joint names of himself and his co-trustee."

DUSS' ALLEGED DECLARATIONS TO JULIUS STICKEL.

Stickel's testimony on this will be found, in chief, Record, vol. II, pp. 533, 534, 535, 539; and his cross-examination, Record, vol. II, pp. 565–568.

He says that he had three conversations with Mr. Duss, one in the garden at Economy, on October 30th, 1892, (Record, vol. II, p. 565):

> "Q. Mr. Stickel, won't you tell me what this conversation was that you say you had with Mr. Duss in the garden at Economy?
>
> "A. Well it was the same, just the real conversation what I told yesterday about. We had a talk about financial affairs, and I asked Mr. Duss--he came in the garden, and I seen on his face like a little trouble, and I asked him if he needs money, and yes, he said, he didn't know how to get up money, and I made fun about it, and I said, 'There is some borrowed money in store there, to get it out,' I said, 'We have plenty of money.' And so we had conversation about different things about our business there, but I mentioned this because this was very particular to me, that Mr. Duss said, 'I made up a plan already in Nebraska how to divide the wealth of Economy, and for to come there to Economy to give advice to some of the members, or council members or others and to get a few thousand dollars out of this advice, but now I have it in my own hands and can do as I please.'
>
> "Q. Did he use the word plan?
>
> "A. He said in German that he broke his head, and that's the same in German as if he had a scheme.
>
> "Q. He said he broke his head?
>
> "A. Yes, sir.
>
> "Q. And do you think that is equivalent to a plan?
>
> "A. Yes; just the same.

"Q. Did he state how he happened, in Nebraska, to think about the Harmony Society?

"A. I don't remember that.

"Q. Was there any discussion at the time in reference to the probable duration or termination of an organization like the Harmony Society?

"A. Why, I can't say that.

"Q. Did you and Mr. Duss talk at all about the probabilities of the duration of a society like the Harmony Society?

"A. Not at that time, that I remember. I said before, we talked different things, but I can't say positive what it was, sir, but this was the particular thing to me.

"Q. Did he say that he had broken his mind in Nebraska at the time that his mother joined the society, in thinking about it—do you remember that?

"A. I don't remember that he said the occcasion of his thinking at all about the Harmony Society was the fact that his mother had joined it."

* * * * * * *

"Q. In the conversation that Duss had with you, did he say what the occasion was of his breaking his mind in Nebraska with reference to the Harmony Society—how he happened to think of it at all?

"A. I don't know the reason he said that to me; I don't know.

"Q. Did he say how he happened to think in Nebraska at all about the Harmony Society?

"A. Oh, I believe just for making money—that's what I believe.

"Q. Not what you believe, but did he say that?

"A. He said, to make a few thousand dollars out of it; that's the reason I can say that.

"Q. Can you give us the date of that conversation?

"A. Yes, sir; the 20th of October, 1892.

"Q. Have you got the memorandum that you say you made of it?

"A. Yes, sir.

"Q. Have you got it here?

"A. I haven't got it here, but I can bring it any time you want it.

"Q. Will you let us see it?

"A. All right, I will bring it over to you.

"Q. How did you happen to make a memorandum of it?

"A. Because it was very particular to me; because I seen it was a scheme.

"Q. And that Duss was telling you?

"A. Yes, sir.

"Q. You were at that time on friendly relations with Duss?

"A. Oh, yes.

"Q. Was there any fight in the society then?

"A. There was a fight, so to say, always between the members. I had a fight with Mr. Duss—he had no reason to fight with me—when they expelled Mr. Feucht. Then we had a fight; Mr. Duss said: 'Now, if you want to stick to Feucht, you will find out how soon we can get rid of the whole business'—'I don't know how to say it in English, but in German, so to say, 'You will find out that you will get out of this, if you stick to Feucht.' I called for some things that were fetched in the house, and then he give me hell (?) for that. And then Mr. Duss seen he couldn't stay to me in an enemy way, and he started to be a friend to me again; and he was always in a friendly way again.

"Q. Then you were in a friendly way, notwithstanding that you had had these differences with Duss. As I understand you, you and Duss were still friends, notwithstanding that you had this fight that you tell us about?

"A. Yes, sir; I didn't care for it; because I thought that way, if a man is not mad by me I am not mad by him; if I say something to him and he don't care for it, then I don't care for it.

"Q. At the time of this conversation, had the Feucht bill been filed in Beaver county?

"A. I don't remember that positively, if it was before Christmas, or if it was after Christmas, but I remember that they expelled Feucht at that time.

"Q. Well, it was after Feucht had been expelled?

"A. I believe so.

"Q. Was it before or after Feucht had been taken back?

"A. I can't state that, because that was all gone so far from my mind.

"Q. Was the conversation you had with Mr. Duss in German?
"A. Yes, sir."

The memorandum of this testimony which Stickel promised to produce he never did produce.

The first conversation (Record, vol. II, pp. 533, 534) was while they were talking about the financial affairs of the society, and its debts, and Stickel was so particular that he noted the conversation down as October 20th, between nine and ten o'clock.

The second conversation (Record, vol. II, p. 534), was in Duss' house, after the signing of the power of attorney to execute the mortgage, and there Stickel testifies as follows:

> "A. Well, we hadn't much conversation; but just after it was signed Mr. Duss said we couldn't exist that way as we were now, because we were too much in debt, and the best thing would be to wind up the whole thing—if we could make some debts, why the mortgage money can be divided and everybody get something out of it.
> "Q. Was that all that was said?
> "A. Well, I don't remember much more about it.
> "Q. In that second conversation was there anything said about the affairs of the society?
> "A. Yes, sir.
> "Mr. Watson—About what?
> "Mr. Schoyer—About the financial affairs of the society?
> "Q. Was there anything said about why the mortgage was given?
> "A. The reason was so that the sheriff couldn't come in and sell everything, because Mr. Duss said to me in two or three days or so the sheriff could come and sell off everything and we couldn't get nothing.
> "Q. Was there anything in that conversation said in regard to the plan that Duss mentioned in the first conversation that he had in Nebraska?
> "A. Well, that was said that he can bring out his plan in such a way, when he gives the mortgage."

The third conversation was to the time that unfit food, as Stickel calls it, was given him, and that was as follows (Record, vol. II, p. 535):

> "A. Yes; I remember once, when I became kind of unfit food, kind of stinking bologna, pudding; and I brought it to Mr. Duss, and we had a talk about it, and I said, 'I am tired of staying here, with such a kind of food, and always fighting.' I said: 'It would be better to give each one a present and to pay off and get right of this fight.' And Mr. Duss said, 'Well, I guess I will do that,' or 'I want to do that,' or something of that kind, to do what I had said."

Mr. Duss' reply to these will be found, Record, vol. II, pp. 871, 872. He says that the conversation between him and Stickel was in reference to the financial condition of the society, and that it would take a large amount of brain work to save it, but that he never said anything at all about dividing the society.

Mr. Duss also remembers the second conversation, after the signing of the mortgage (Record, vol. II, p. 872), and testifies it was Stickel that suggested a division of the assets of the society, and not himself, and that he refused to consider it.

(The improbability of Stickel's story in the then financial condition of the society should not be overlooked.)

The third interview (Record, vol. II, p. 873,) was the morning of the day of the hearing in the Feucht bill, when Stickel made a demand for money, and said he would not put in any affidavit if such was given him, and Mr. Duss refused to make any terms with him.

See, also, Record, vol. II, pp. 873, 874.

TESTIMONY OF JOHN S. DUSS AS TO ALLEGED ADMISSIONS TO JULIUS STICKEL.

"Q. I call your attention to the testimony of Julius Stickel, on pages 404, 405 and 406 of the typewritten copy, in reference to Mr. Siber and his complaint to you about Mrs. Siber, and I ask you if you have any explanation of Stickel's complaint to you about Mrs. Siber, except that which you have already stated?

"A. I have nothing to add.

"Q. You have already given your explanation of it?

"A. Yes, sir.

"Q. I call your attention to Stickel's testimony, on page 417 of the typewritten copy, wherein Stickel testified that he had a conversation, while you were senior trustee, with reference to the winding up of the Economite Society, and that your conversation took place in Economy Garden, and Stickel says the following was the conversation: 'While we had a talk about the financial affairs of Economy, and I spoke to Mr. Duss about the debts of Economy and so on, and Mr. Duss said to me plainly that he broke his brain or his mind to divide the society when he used to live yet in Nebraska, and he thought to give advice to some of the members to make a few thousand dollars for him.' Q. For the advice? A. For the advice; but he said, 'Now I have it in my own hands, and I can do as it suits me.'" Is that true?

"A. It is not true.

"Q. Did you ever have any conversation with Stickel?

"A. Yes, sir.

"Q. State what it was.

"A. It is true that Stickle asked me whether I was troubled about the finances of the society, and I admitted to a certain extent that I was—to the extent that it would take a large amount of brain work to save it; but about my breaking my head or mind to break it up, I never said anything of the kind; neither has it ever entered my mind. What I said was exactly the opposite.

"Q. What was it?

"A. That I was breaking my head to save it.

"Q. He also says, on pages 418 and 419 of the type-written copy, that he had a conversation with you after the power of attorney was signed, and that it was in your house, and that you then said: 'Well, we had not much conversation; but just after it was signed Mr. Duss said we could not exist that way, as we were now, because we were too much in debt, and the best thing would be to wind up the whole thing. If we could make some debts, why the mortgage money could be divided, and everybody get something out of it.' Is that true?

"A. No, sir; not a word of it.

"Q. Do you remember of having any talk with him about that matter?

"A. I did.

"Q. Well, what was it?

"A. I remember about Stickel himself making some suggestion of that kind, and I said it would be out of the question; that we needed this money to pay the debts, and we could not possibly divide anything.

"Q. He also testified, on page 420, that in a conversation with you, as follows: 'Yes, I remember once, when I became kind of unfit food, kind of stinking bologna pudding, and I brought it to Mr. Duss, and we had a talk about it, and I said I am tired of staying here with such kind of food and always fighting, I said it would be better to give everyone a present, and pay off and get rid of this fighting; and Mr. Duss said, well, I guess I will do that, or I want to do that; or something of that kind to do.' Is that true?

"A. It is not true.

"Q. What was the conversation?

"A. When Stickel called on me I could not have anything to say; he was always blowing about how good he was, and how industrious he was, and how talented he was. He may have mentioned something about having a fight. He never had any fight with me; but about the division of the property, there is no truth in this statement. What I remember is this—I forgot it yesterday—he was another man that spoke about leaving the society before the hearing; and I think he met me at the depot one

morning, probably on the morning of the very day on which the hearing in the Feucht bill took place at Beaver, and wanted me to give him a certain amount of money, and he said he wouldn't put in any affidavit; and I said, no, I will make no such bargain.

"Q. I also call your attention to pages 512 and 513 of the type-written testimony, which is Stickle's statement and examination as to a conversation between you and he in the garden in Economy, when he says you talked about breaking your head to break up the society, and I ask you if you desire to make any other explanation than what you have already made in reference to that, as to what Stickel's said, do you?

"A. Yes, sir. This reminds me that he said he knew where there was plenty of gold; that there was a hidden treasure there in the store yard, and that a man from Rochester, who could feel the presence of gold or silver in his body when he came near it, had told him so. I said, all right; I wish you would find it. He came to me a day or two afterwards and stated that it was no use—that the spirits would remove it if it was taken out.

"Q. Have you any other explanation?

"A. I think it was years ago, in Nebraska, before my mother joined the society, when she spoke of that. I thought something over the final customs of the Harmony Society, the same as seems to have been done by quite a number, that the question, What should become of the great wealth? seems to have been thoroughly settled long before I came back to Economy; that the question now was, How to find enough wealth to keep it going?

"Q. I call your attention to Stickel's testimony, on page 315, in reference to Stickel's allegation that he had a fight with you, or you with him.

"A. He says that he had a fight with me; I had none with him; that was not the way of it, the way he states it. There was no fight whatsoever. The only matter which he could construe in that light was in regard to the expulsion of Feucht at the time we went there and knocked the locks off. Stickel came to me the same day and complained about this action. He didn't find any particular fault with anybody; but what he did say was that he deplored

that such a thing should occur in the society. He simply felt bad about it. I didn't say to him, 'Now, if you want to stick to Feucht you will find out how soon we can get rid of the whole business,' or anything of the kind.

"Q. You have already had your attention called to the complaints made to you by Stickel about drunkenness in the society, and also adultery?

"A. Yes, sir. Those questions I have gone over in detail. He complained to me about more persons than I testified to.

"Q. If he complained about anyone else, let us know.

"A. He complained of Hugo Miller at the sawmill making punch between times, and complaining that the sawmill men got more wine and cider than he did.

"Q. Do yon remember any person else that he complained about?

"A. About drunkenness?

"Q. That is what I am after.

"A. I think he complained about Blasius Platz, but not to me; that is, the complaint he made cropped out before the board that Stickel had charged him with drinking too much.

"Q. I call your attention to pages 425 and 426 of Stickel's testimony, where he gives a statement as to what took place between you and himself with reference to his leaving the society. I wish you would read that and tell me if that statement is correct, and, if it is not, tell me what is wrong with it.

"A. Mr. Stickel's recollection of this matter is not correct. I didn't use the expression in the sense that he used it; neither did Siver say that we would give him $3,500, based on the fact that it would amount to $1,000 for each year and $500 more to move. He did want $5,000. After some talk we induced him to be satisfied with $3,500 and this account of his father's, making $3,620 in all.

"Q. Stickel also, on page 474, gives a statement of a complaint that he said that he made to you about Stievalter; look at it and tell me what the facts are, as you recollect them.

"A. He didn't say he said this to me, Mr. Watson.

"Q. Yes, he does. If you look down at the bottom of page 474 you will find it.

"A. He did talk to me about Stievalter, and he did complain about the blacksmith shop, and we did suspend Stievalter on this complaint, in connection with other complaints.

"Q. I wish you would take and read pages 466, 467, 468, 469 and 470, being Stickel's roll of complaints, and as you go along make whatever additional statements you desire to in reference to Stickel's testimony.

"A. Mr. Stickel spoke to me several times during the years 1891 and 1892. He says—his main conversation was invariably about himself, his own wonderful talents, and his importance in the community.

This question is objected to.

Witness—Incidentally it would crop out, the comparison with him and the other members; how much better he was. He says here he talked to me because I didn't drink.

By Mr. Watson—Is that true?

"A. That is true.

"Q. I am not asking you to give us the details or his notions, but just the facts.

"A. He says he complained about Miller; that he received money from the saw mill; I don't think I have anything to add to that.

"Q. Did Stickel make other complaints?

"A. He said he made punch, or something the other men didn't have. I myself don't know what punch is. He says he spoke to him about Laubbee leaving his buggy outside of the village and not bringing it home. I didn't see it. He says that I said, when he spoke about Miller, that he ought not to get the He never said anything of the kind. What he says in reference to Laubbee, no such conversation ever took place.

By Mr. Shiras—What page is that?

"A. 469. He says that I said I had the power to give Laubbee nothing. I have no recollection of him saying that.

"Q. Here are two pages, 496 and 497; what complaint was that that he testified that he made to you. Have you any statement to give in reference to that?

"A. No, he didn't tell me that the girl told him that. He said it was common talk. That that which is enumerated in his testimony was true.

"Q. Is it true that you said to Stickel, when he was talking to you about Feucht: 'That you will find that you will get out of this if you stick to Feucht?'

"A. It is not true.

"Q. Did the board order Stickel to work?

"A. Yes, sir.

"Q. Did he refuse to work?

"A. Yes, sir; so the committee that was sent to order him to go to work reported.

"Q. How long was Stickel idle?

"A. Several months before he left the society.

"Q. I have already examined you in reference to the French Point House?

"A. Yes, sir.

"Q. I understood you to say that you had nothing to do with the erection of the house?

"Objected to.

"Q. What had you to do with the erection of the French Point House?

"A. Mr. Creese, the contractor that was erecting it, spoke to me about the kind of a heater that ought to be put in a house of that size, and the question was taken up by Henrici, myself and the contractor, and it was decided to put in a hot water heater, and Creese took me to Beaver Falls to show me how it worked. He had just put one in down there a short time before.

"Q. Is that all you had to do with the erection of the French Point House?

"A. Except that I said to Creese that I wanted the house built in such a way that it didn't look like a barn.

"Q. What was the house built for?

"A. A boarding house for saw mill and planing mill hands.

"Q. Mr. Duss. I call your attention to paragraph 14 of the bill, in which it is alleged that you formed a conspiracy to wreck and dismember the Harmony Society, and to obtain for yourself and those of your confederates the property of the society; is that true?

"A. That is not true.

"Q. It alleges that you directed; you having entire charge of the Board of Elders, directed that no new members were to be elected to the society under any circumstances; is that true?

"A. It is not true.

"Q. It also alleges that after you and Mrs. Duss had been elected no members have been admitted to the society?

"A. That is not true.

"Q. It further alleges that you arranged for the removal of several members of the society, to the end that you and your confederates might acquire the entire assets of the society; is that true?

"A. That is not true."

SECOND QUESTION.

From this examination of the testimony, it is plain that the

SECOND QUESTION

asked may, also, be answered like the first, in the *negative.*

The Harmony Society has not been dissolved, either by the consent of its members or by the abandonment of its purposes.

When we remember that the findings of the Master and the court below were exactly as we state them here, it will be seen that the position on the second question, as on the first, is impregnable.

TWELFTH ASSIGNMENT OF ERROR.

Here the appellants allege that the agreement of 1847, unquestioned in the society for a period of over fifty years,

> "destroyed the communism of the property and the patriarchial form of government provided in the agreements of 1805 and 1827, and substituted therefor a capitalistic system, assimilated to the forms usually adopted for the management of capital, and its employment for profit under the direction of a directory and presiding officers."

The argument made below, and probably here, will be that this was virtually the disrupting of the society. The appellants who make this argument asserted in their bill, and swore to the assertions, (see paragraph 8):

> "8th. That the Harmony Society from the period of its inception until a recent date, adhered rigidly to its plan of government and became illustrious and highly respected by reason of its sincere advocacy of the equality of man, its espousal of the highest principles of Christianity, and its honesty and benevolent administration of all public functions, whether in the management of its internal affairs or in its many transactions with the citizens of Western Pennsylvania."

Again, in paragraph 10th of the bill, these same appellants allege:

> "That during the year 1890, after a long period of prosperity and complete harmony in said society, began a second conspiracy."

The present position, evidenced by the above assignment, is entirely inconsistent and contradictory to and in conflict with the 8th and 10th paragraphs just cited of the bill.

The present allegations are made not by any person who was ever a member of the society, but by persons who claim lineally or collaterally to be the descendants of persons who died in or out of the society, in some cases, seventy years ago.

It is incredible that these outside people are entitled to criticise the agreements the members of the society saw fit to make.

The contract of 1847 merely changed the mode of government of the society from that of a single patriarch, as George Rapp was, to a Board of Elders, elected by the members.

The mode of holding the property of the society was merely changed from that of a single agent, George Rapp, to that of two trustees elected by the society, and whose powers were more exactly defined.

The 1847 agreement did not change at all the purposes for which the society was organized, or the contracts *inter sese* as to the rights of the members. It reaffirmed and adopted the agreements of 1827 and 1836, consider *ante*.

PUBLIC POLICY.

The Twenty-fourth Assignment of Error.

According to this assignment, the scheme of the association, as disclosed by its agreements and its prevailing customs and methods, is against public policy, and, therefore, should be stricken down. It is supposed that the practice of celibacy, though not a part of the written agreements of the parties is the custom attached.

Yet this is the same Harmony Society, which as averred in the Eighth paragraph in the bill, had become

> "illustrious and highly respected by reason of its sincere advocacy of the equality of man, its espousal of the highest principles of Christianity, and its honesty and benevolent administration of all public functions, whether in the management of its internal affairs or in its many transactions with the citizens of Western Pennsylvania."

The validity of such contracts as those of the Harmony Society has been passed upon, as we show in the cases heretofore cited, by the Supreme Court of the United States and the courts of last resort of Massachusetts, Maine, New York, Pennsylvania and Ohio, and, also, by the Circuit Court of the United States. In every instance such agreements have been held to be valid and binding, with nothing in them which was contrary to public policy or in conflict with any of the established customs and usages of the people among whom these communities were located.

Schriber vs. Rapp, 5 *Watts*, 351.

This case arose under the agreement of 1827, and distinctly declared its legality.

Nachtrieb vs. Harmony Society, 3 *Wallace, Jr.*, 66, Circuit Court of the United States decision by Grier and Irwin, justices, on the Harmony Society agreements.

See the same case reported as Baker et al. vs Nachtrieb, 19 *Howard*, 126, in the Supreme Court of the United States.

SEE, ALSO,

the manuscript of Judge Irwin's decision in the case of Lemmix vs. Harmony Society, No. 2, November term, 1852, in equity, in the Circuit Court of the United States for the Western District of Pennsylvania.

SEE, ALSO,

on the Harmony Society agreements the Supreme Court of the United States in the case of Speidel vs. Henrici, 120 *U. S. Reports*, 377.

SEE, ALSO,

Goesele vs. Bimeler et al., 14 *Howard*, 590, where the Supreme Court of the United States considered the agreements on which the Separatist Society of Zoar, Ohio, was founded, which agreements, in many respects, resemble the Harmony Society.

SEE, ALSO,

Burt vs. Oneida Community, 137 *New York Reports*, 346, decided by the Court of Appeals of New York, on agreements which are in substantial conformity with those of the Harmony Society.

SEE, ALSO,

Waite vs. Merrill et al., 4 *Maine*, 90, a decision of the Supreme Court of Maine on the agreements under which the Shaker Society was organized, which agreements, in many respects, resemble those of the Harmony Society, and in which the argument against celibacy was pressed by the counsel for the plaintiff.

SEE, ALSO,

Gasely *et al.* vs. The Separatist Society of Zoar, 13 *Ohio State Reports*, 145.

SEE, ALSO,

Grosvenor vs. United Society of Believers, 118 *Mass.*, 78, concerning the Shaker agreements, which resemble, in many respects, the Harmony Society.

It will be noted that, in the Shaker agreements, and especially, as to the one considered by the highest court in Maine, the doctrine of celibacy was enforced, and was part of the contract, while, in no portion of any one of the agreements in the Harmony Society, is that mentioned.

Even assuming, however, that it is a tenet of the society, it would be a curious result for a court in a Christian land, where Christianity is said to be part of the common law, for that reason to strike down the society which believes in that peculiar doctrine.

Religious history, the words of the Divine Master himself, the preachings of Paul and the other Apostles, extol the doctrine of celibacy, and ever since the Resurrection, in Christian poetry and literature, the saints and the martyrs of the Church have, with one accord, allotted the highest place in

the religious world to those whose lives were in accord with that faith.

Hundreds of orders in the Roman Catholic Church, many in the English Episcopal Church, and some in other churches, enforce the celibacy of their members, and, especially, of the priesthood.

There cannot be found a single case in the history of the English common law or English Chancery, where this tenet, even if faithfully kept and practiced, has been held to be in conflict with the policy of the nation or of the state.

COSTS.

The decree in the Circuit Court dismissed the bill at the costs of the plaintiffs, although a vigorous appeal was made by their counsel to prevent, at least, that portion of the decree.

Judge Acheson said (page 359, vol. I, of the Record):

> "The general rule in equity that costs follow the decree, we think, should be applied here under the circumstances. Swetzel et al. vs. Penn Bank, 147 *Pa.*, 154."

The bill alleges gross fraud and immorality.

These charges were fully met and overcome, and there is no good reason apparent which would relieve the plaintiffs from the costs their own false charges incurred.

APPENDIX.

AGREEMENT OF 1805.

Be it hereby known to all who need to know it that the following agreement has this day been made and concluded between us, the subscribers of the one part, and George Rapp and his associates of the other part:

ARTICLE 1. We the subscribers, on our part and on the part of our heirs and descendants, deliver up, renounce and remit all our estate and property consisting of cash, land and chattels, or whatever it may be, to George Rapp and his associates, in Harmony, Butler county, Pennsylvania, as a free gift or donation, for the benefit and use of the community there, and bind ourselves on our part, as well as on the part of our heirs and descendants, to make free renunciation thereof, and to leave the same at the disposal of the superintendents of the community, as if we never had nor possessed it.

ARTICLE 2. We do pledge ourselves jointly and severally to submit to the laws and regulations of the community, and to show due and ready obedience toward those who are appointed and chosen by the community as superintendents in such a manner that not only we ourselves endeavor, by the labor of our hands, to promote the good and interest of the community, but also to hold our children and families to do the same.

ARTICLE 3. If, contrary to our expectation, the case should happen, and we jointly or severally could not stand to it in the community, and we would within a few or more years break our promises and withdraw from the community, for whatever cause it may be, never to demand any reward, either for ourselves or children or those belonging to us, for any of our labors or services rendered, but whatever we jointly and severally shall or may do, we will have all done as a voluntary service for our brethren.

In consideration whereof George Rapp and his associates adopt the subscribers jointly and severally as members of the community, whereby each of them obtains the privilege to be present at each religious meeting; not only they themselves, but also their children and families, shall and will receive the same necessary instructions in church and school which is needful and requisite for their temporal good and welfare as well as eternal felicity.

ARTICLE 4. George Rapp and his associates promise to supply the subscribers jointly and severally with all the necessaries of life, as lodging, meat, drink and clothing, etc., and not only during their healthful days, but also when one or more of them become sick or otherwise unfit for labor, they shall have and enjoy the same support and maintenance as before; and if, after a short or long period, the father or mother of a family should die, or be otherwise departed from the community and leave a family behind, they shall not be left widows or orphans, but partake of the same rights and maintenance as long as they live or remain in the community, as well in sick as healthful days, the same as before, or as circumstances or necessity may require.

ARTICLE 5. And if the case should happen as stated above, that one or more of the subscribers, after a short or a long period, should break their promise and could or would not submit to the laws and regulations of the church or community, and for that or any other cause would leave Harmony, George Rapp and his associates promise to refund him or them the value of his or their property brought in, without interest, in one, two or three annual installments, as the sum may be, large or small; and if one or more of them were poor and brought nothing in the community, they shall, provided they depart openly and orderly, receive a donation in money, according to his or their conduct while a member, or as he or their circumstances and necessities may require, which George Rapp and his associates shall determine at his or their departure.

In corfirmation whereof both parties have signed their names.

Done in Harmony, February 15, 1805.

AGREEMENT OF 1821.

Be it hereby known that to-day, (20th January, 1821), in the year of our Lord one thousand eight hundred and twenty-one, the present agreement, treaty and alliance was made and concluded between us, the following persons, to wit: N. N., &c., of the one part, and George Rapp and his associates of the other part.

After the aforesaid persons became sufficiently acquainted with the principles, rules and regulations of the community of George Rapp and his association, by virtue of their religious principles, they have, after long and mature reflection, out of their own free will, determined to join the community of George Rapp and his association, in Harmony, Posey County, State of Indiana; to that purpose the aforesaid persons bind themselves and promise solemnly by these presents, to comply with the ordinances, rules and regulations of the community, and render due obedience to the superintendents ordained by the community, and to perform as much as possible all occupations and labors to which they are ordered, and help to promote the benefit, happiness and prosperity of the community. And if the case should happen that the aforesaid persons, jointly or singly, after a short or long period of time, leave the community for any cause whatever, they hereby bind themselves, jointly and each for himself separately, never and in no case to bring any account, nor make any claim, either against the association or any individual member thereof, for their labor and services rendered; also, never to make any demand, ask or claim any other payment, under any name and description whatsoever, but will do and have done all things out of Christian love, for the good and benefit of the community, or else take it as a gift, if George Rapp and his association willingly give them something.

However, George Rapp and his association, in return adopt the aforesaid persons into their community, whereby they obtain prerogative to partake of all meetings for divine services by which they receive in church and school the neces-

sary instructions, requisite and needful for their temporal benefit, and happiness, and eternal felicity. George Rapp and his association bind themselves further to supply the aforesaid persons with all the wants and necessaries of life, to-wit: meat, drink and clothing &c., and indeed not only during their healthful days, but also if all or any of them get sick or otherwise infirm and unable to work, they shall, as long as they remain members of the community, receive and enjoy the same support as before, during their better days, or as their circumstances may require.

In confirmation of the presents we, both parties, have hereunto set our hands and seals. Done in Harmony, the day and year above stated.

AGREEMENT OF 1827.

Whereas, By the favor of Divine Providence, an association, or community, has been formed by George Rapp and many others, upon the basis of Christian fellowship, the principles of which being faithfully derived from the sacred scriptures, include the government of the patriarchal age, united to the community of property adopted in the days of the apostles, and wherein the single object sought is to approximate, so far as human imperfection may allow, to the fulfillment of the will of God, by the exercises of those affections, and the practice of those virtues, which are essential to the happiness of man in time and throughout eternity:

And whereas, It is necessary to the good order and well-being of said association that the condition of membership should be clearly understood, and that the rights, and privileges, and duties of every individual therein should be so defined as to prevent mistake or disappointment on the one hand, and contention or disagreement on the other.

Therefore, Be it known to all whom it may concern: That we, the undersigned, citizens of Beaver County, in the Com-

monwealth of Pennsylvania, do severally and distinctly, each for himself, covenant, grant, and agree to, and with the said George Rapp, and his associates, as follows, to wit:

ARTICLE 1. We, the undersigned, for ourselves, our heirs, executors and administrators, do hereby give, grant, and forever convey, to the said George Rapp and his associates, and their heirs and assigns, all our property, real, personal and mixed, whether it be lands and tenements, goods, and chattels, money or debts due to us, jointly or severally, in possession, or in remainder, or in revision, or in expectancy, whatsoever or wheresoever, without evasion, or qualification, or reserve, as a free gift or donation, for the benefit and use of the said association or community; and we do hereby bind ourselves, our heirs, executors and administrators, to all such other acts as may be necessary to vest a perfect title to the same in the said association, and to place the said property at the full disposal of the superintendents of the said community without delay.

ARTICLE 2. We do further covenant and agree to and with the said George Rapp, and his associates, that we will severally submit faithfully to the laws and regulations of the said community, and will at all times manifest a cheerful and ready obedience toward those who are or may be appointed as superintendents thereof, holding ourselves bound to promote the interests and welfare of the said community, not only by the labor of our own hands, but also by that of our children, or families and others who now are or hereafter may be under our control.

ARTICLE 3. If, contrary to our expectations, it should so happen that we could not render the faithful obedience aforesaid, and should be induced, from that or any other cause to withdraw from the said association, then and in such case, we do expressly covenant and agree to and with the said George Rapp, and his associates, that we will never claim or demand, either for ourselves, our children, or for any one belonging to us, directly or indirectly, any compensation, wages or reward whatever, for our or their labor or services rendered to the said community, or to any member thereof; but whatever we or our families jointly or severally shall or may do, all shall

be held and considered as a voluntary service for our brethren.

ARTICLE 4. In consideration of the premises, the said George Rapp, and his associates, do by these presents, adopt the undersigned, jointly and severally, as members of the said community, whereby each of them obtains the privilege of being present at every religious meeting, and of receiving, not only for themselves, but also for their children and families, all such instructions in church and school as may be reasonably required, both for their temporal good and for their eternal felicity.

ARTICLE 5. The said George Rapp, and his associates, further agree to supply the undersigned severally with all the necessaries of life, as clothing, meat, drink, lodging, etc., for themselves and their families; and this provision is not only limited to their days of health and strength, but when any of them shall become sick, infirm, or otherwise unfit for labor, together with such medicine, care and attendance and consolation as their situation may reasonably demand. And if at any time after they have become members of the association, the father or mother of a family should die or be otherwise separated from the community, and shall leave their family behind, such family shall not be left orphans or destitute, but shall partake of the same rights or maintenance as before, so long as they remain in the association, as well in sickness as in health, and to such extent as their circumstances may require.

ARTICLE 6. And if it should happen as above mentioned, that any of the undersigned should violate his or her agreement, and would or could not submit to the laws and regulations of the church or community, and for that or any other reason should withdraw from the association, then the said George Rapp, and his associates, agree to refund to him or them the value of all such property, without interest, as he or they may have brought into the community in compliance with the first article of this agreement, and the said value to be refunded in one, two or three annual installments, as the said George Rapp and his associates shall determine. And if the person or persons so withdrawing themselves were

poor, and brought nothing into the community, yet if they depart openly and regularly, they shall receive a donation in money, according to the length of their stay, and to their conduct, and to such an amount as their necessities may require, in the judgment of the superintendents of the association.

In witness whereof and in testimony that the undersigned have become members of the said community, upon the conditions aforesaid, they have hereunto severally and each for himself set their hands and seals, on the 9th day of March, in the year 1827.

In the presence of

JOHN HOPKINS
and
CHARLES S. VOLTZ.

AGREEMENT OF 1836.

WHEREAS, The Harmony Society, consisting of George Rapp and many others, now established in the town of Economy, in Beaver County, Pennsylvania, did, on the 9th of March, 1827, enter into certain articles of association, of which the 6th in number, is as follows, viz:

And if it would so happen as above mentioned, that any of the undersigned should violate his or their agreement, and would, or could not, submit to the laws and regulations of the church or community, and for that or any other cause should withdraw from the association, then the George Rapp and his associates agree to refund to him or them the value of all such property as he or they may have brought into the community, in compliance with the first article of this agreement, the said value to be refunded without interest, in one, two or three annual instalments, as the said George Rapp and his associates shall determine.

And if any person or persons so withdrawing themselves were poor, and brought nothing into the community, yet if they depart openly and regularly, they shall receive a dona-

tion in money, according to the length of their stay and to their conduct, and to such amount as their necessities may require in the judgment of the superintendents of the association.

AND WHEREAS, The provisions of the said 6th article, though assented to at the time, manifestly depart from the great principle of a community of goods and may tend to foster and perpetuate a feeling of inequality at variance with the true spirit and objects of the association :

AND WHEREAS, The principle of restoration of property, besides its pernicious tendency, is one which cannot now be enforced with uniformity and fairness, inasmuch as the members of the association, in the year 1818, under a solemn conviction of the truth of what is above recited, did destroy all record and memorial of the respective contributions up to that time:

AND WHEREAS, Continued happiness and prosperity of the association, a more intimate knowledge of each other, have removed from the minds of all members the least apprehension of injustice and bad faith:

NOW THEREFORE, Be it known by these presents, that the undersigned, with a view to carry out fully the great principles of our union, and in consideration of the benefits to be derived therefrom, do hereby solemnly enter into covenants, and agree with each other, as follows:

1st. The said 6th article is entirely annulled and made void, as if it had never existed; all others remain in full force as heretofore.

2nd. All the property of the society, real, personal and mixed, in law or equity, and howsoever, contributed or acquired shall be deemed, now and forever joint and indivisiable stock. Each individual is to be considered to have finally and irrevocably parted with all his former contributions, whether in land, goods, money or labor; and the same rule shall apply to all future contributions whatever they may be.

3rd. Should any individual withdraw from the society, or depart this life, neither he, in the one case nor his representatives in the other, shall be entitled to demand an account of

said contributions, whether in land, goods, money or labor, or to claim anything from the society as matter of right. But it shall be left altogether to the discretion of the superintendent, to decide whether any, and if any, what allowance shall be made to such member, or his representatives as a donation.

Invoking the blessing of God on this sacrifice of all narrow and selfish feelings to the true purposes of the association and to the advancement of our own permanent prosperity and happiness, we have signed the foregoing instrument, and affixed thereunto our respective seals, at Economy, this 31st day of October, 1836.

Signed and sealed in the presence of

CHARLES D. VOLTZ,
WILLIAM P. BAUM.
(Signed by 391 members.)
(Signed by plaintiff and others.)

AGREEMENT OF 1847.

WHEREAS, By the decree of God, the venerable Patriarch and much-beloved founder and leader of the Harmony Society, George Rapp, has departed this life, whereby its members are deprived of Christian fellowship and religious ministry, and of this superintendence in their temporal affairs, and whereas in consequence of this deeply afflicting dispensation it has become necessary to the good order and well-being of the association that some plan should be agreed upon to regulate its future affairs, promote its general welfare and preserve and maintain it upon its original basis.

THEREFORE, Be it known to all whom it may concern, that we, the undersigned surviving and remaining members of the Harmony Society, and constituting the same, do severally and distinctly each for himself covenant, grant and agree to and with all the others thereof, and with those who shall hereafter become members as follows: That is to say,

ARTICLE 1st. We do hereby solemnly recognize, re-establish and continue the articles of our association (the sixth section excepted) entered into at Economy on the 9th day of March, A. D. 1827, in the presence of John H. Hopkins and Charles L. Voltz and the supplement thereto, adopted at the same place on the 31st day of October, A. D. 1836, in the presence of Charles L. Voltz and William F. Baum, except so far as the same are affected by the death of the said George Rapp, or hereinafter altered or modified, and to this extent we declare the said articles to remain in full force.

ARTICLE 2nd. We hereby ordain and establish a Board of Elders, which shall consist of nine members of the Harmony Society and their successors, to be chosen as hereinafter provided: John Stahl, John Schnabel, Adam Nachtrieb, Matthew Scholle, Joseph Hoerule, John Eberle, Romelius L. Baker, John Henrici, Johnathan Lenz shall be the first board.

ARTICLE 3rd. The Board of Elders shall have and exercise the following powers, to-wit: 1st. To regulate and manage exclusively the internal temporal concerns of the Harmony Society; to appoint and remove superintendents in the several departments of industry; to make regulations and give orders in relation to their business operations, and generally to take care that members perform the duties assigned to them. 2nd. To determine all disputes and misunderstandings amongst the members of the society; to advise if necessary, reprove any member who may be in fault or found delinquent in his duty. 3rd. To admit new members into the society and to expel them therefrom. New members when admitted shall subscribe this agreement as the evidence of their membership, and of the rights acquired by, and the duties imposed upon them. 4th. To establish regulations for the maintenance and improvement of the morals of the society and for the instruction of its members. 5th. To appoint one or more of its members spiritual leaders and instructions with such authority in relation to church discipline as shall be conferred by the board. 6th. To remove from the Board of Elders and to declare his seat vacated, also to remove from office either or both of the trustees hereinafter appointed for the management of the ex-

ternal affairs and their successors in office. 7th. To fill all vacancies in the Board of Elders occasioned by the death, resignation or removal from office any of its members and their successors, and so as often as a vacancy shall occur, to fill all vacancies in the office of trustee, when either or both of the trustees or their successors shall die, resign his office, or be removed from the same, and so often as a vacancy shall occur. 8th. The concurrence of six members of the Board of Elders shall be deemed the act of the board and a legal exercise of any of the powers hereinbefore conferred on the said board. 9th. A record book shall be kept in which the Board of Elders shall enter all proceedings that they shall consider of sufficient importance to be preserved. In all controversies, judicial or otherwise, in which the society or any of its members may be a party, such record shall be full and absolute evidence of the facts and proceedings therein contained and the affirmation of any elder shall be competent evidence of the identity of the said record.

ARTICLE 4th. We do further ordain and establish a Board of Trustees for the exclusive management of the external business and affairs of the society, which board shall consist of two persons, who shall be members of the Board of Elders, and their successors who shall be appointed as hereinbefore provided. Romelius L. Baker and Jacob Henrici shall be the first Board of Trustees.

ARTICLE 6th. The said trustees shall jointly and severally have and exercise the powers following, to-wit: 1st. In their own names or that of either of them, or otherwise, to purchase and sell, deal, barter, exchange and traffic, make all contracts and bargains in the prosecution of the business, to invest the funds in stocks and other securities, and make transfers and assignments, to collect debts, receive and pay out moneys, settle claims, compromise disputes, institute legal proceedings, appoint and dismiss agents, clerks and attorneys in fact, and at law, and generally to transact all the external business affairs of the society. 2d. To make donations to seceding and excluded members and to the representatives of those who are deceased and for such benevolent and charitable purposes as they may deem prudent

and fit. 3d. The said trustees shall have power jointly to purchase real estate in their own names and also in their joint names to grant, bargain, sell and convey all or any of the lands and tenements now or hereafter owned by or belonging to the said society, and for this purpose to execute deeds of conveyance in fee simple or otherwise in their joint names, but the proceeds of all such sales shall be held in trust for the society. 4th. For the purpose of providing effectual and convenient remedy in law for all injuries to the property of the said society, real and personal, by trespass, ouster, detention, conversion or otherwise. The said trustees are hereby invested with the rights of possession, entry and action in their own names as fully and to all intents and purposes, as do and may exist in the said society, and to effectuate this object more completely and in consideration thereof, we grant and transfer to the said trustees all such title and interest in the said property as shall be necessary therefor. The proceeds of all suits to be brought shall be in trust for the society. 5th. The powers hereby vested in the said trustees shall extend to and embrace all the property of said society, real, personal or mixed, whether standing or held in the name of the late Frederick Rapp, the said George Rapp, or in any other name or form whatsoever.

ARTICLE 6th. It is hereby distinctly and absolutely declared and provided that all the property, real, personal and mixed, which now or hereafter shall be held or acquired by any trustee or trustees or person under them, is and shall be deemed the common property of said society, and each trustee now or hereafter appointed, hereby disclaims all personal interest in the present resources and future earnings of the society, other than that of a member thereof, according to the articles of the association hereby re-established and continued, and according to the present agreement.

IN WITNESS WHEREOF, We, the undersigned members of the Harmony Society, who constitute the said association, have, to these articles executed in English and in German, hereunto set our hands and seals at Economy, in Beaver County, this 12th day of August, A. D., 1847.

Read over to and signed and sealed by the several persons whose names are subscribed in the presence of us.

Signed by W. P. BAUM AND OTHERS.

Duly acknowledged.

Recorded in Beaver County, Pa., deed book 25, page 121, &c.

AGREEMENT OF 1890.

WHEREAS, After the death of George Rapp, the founder and leader of the Harmony Society, to wit: On the 12th day of August, A. D. 1847. All the then members of the said society, by articles and a compact in writing of that date, duly executed at Economy, in the county of Beaver, State of Pennsylvania, in the presence of William P. Baum, Francis LeGoulan and Andrew Bimber, and subsequently recorded in the office for recording deeds, in and for the county of Beaver, in Deed Book, vol. 25, page 121, &c., adopted and established a system and plan for the regulation and government of the society, the management of their internal temporal affairs, as also for the management and transaction of their external affairs, and business in and by which articles John Schnabel, Adam Nachtrieb, John Eberly, Matthew Schottle, Joseph Hoerhla, John Eberly, Romelius L. Baker, Jacob Henrici and Jonathan Lenz were appointed and constituted the first board of elders therein established; and Romelius L. Baker and Jacob Henrici, two members of the society and of the board of elders, aforesaid, were therein appointed and constituted the members of the board of trustees of said society, provided for and established, which board of elders as thus constituted, and their successors, duly appointed, under the authority and in the manner therein granted and provided, have managed the internal temporal affairs of the society as therein directed until the present time, the present board of elders being constituted and consisting of Jacob Henrici, Ernest Woelfel, Michael Stiab, Johannes Scheid, Moritz J. Fredericka, Gottlieb Laupp, J. Jacob Niclaus, Her-

man Fischern and John S. Duss; and Romelius L. Baker and Jacob Henrici, the trustees aforesaid, and their successors, were and by said articles authorized and empowered, jointly and severally in their own names, or that of either of them, to make all contracts, purchases and sell, invest the funds of the society, collect debts, receive and pay monies, compromise and settle claims and disputes, appoint and discharge attorneys in fact, and at law, institute and conduct legal proceedings and generally to manage and transact all the external business and affairs of the society, to make donations to withdrawing members and for charitable purposes, &c. Also jointly in their own names, to grant, bargain, sell and convey all or any of the lands, tenements and real estate then or thereafter owned or belonging to the society, and for this purpose to execute deeds of conveyance in fee simple or otherwise, in their joint names, &c., as by reference to said articles recorded as aforesaid will more fully appear.

And Whereas, Romelius L. Baker and Jacob Henrici accepted said trust, acted as trustees of said Harmony Society, managing and transacting their business and affairs under the authority aforesaid, until the death of the said Romelius L. Baker, on the 11th day of January, 1868, whereupon in pursuance of the authority conferred by and according to the terms and provisions of said articles recorded as aforesaid, Johnathan Lenz, a member of said society, and the board of elders, aforesaid, was duly appointed and constituted a member of the board of trustees, to fill the vacancy occasioned by the death of said Romelius L. Baker, and thereafter the external business and affairs thereof were managed and conducted and transacted by the said Jacob Henrici and Johnathan Lenz as trustees, the same being managed, conducted and transacted under and in accordance with the authority given and conferred by the articles aforesaid until the death of said Johnathan Lenz, on the 21st day of January, 1890, whereupon the board of elders, consisting of the members last hereinbefore named and mentioned as constituting said board, in pursuance of the authority and direction of the articles aforesaid, appointed and constituted Ernest Woelful (also a member of said society and of said board of elders) a trustee, to

fill the vacancy thus occasioned in the said board of trustees, and the said Jacob Henrici and Ernest Woelful have since that time conducted and transacted the business affairs of the society according to the terms and provisions of the articles aforesaid.

And Whereas, More than forty years have elapsed since the execution of the articles and compact aforesaid, adopting and establishing the system and plan for the regulation of the government of the internal affairs of the society, and the management, control and transaction of the external business and affairs thereof, and many changes have taken place in the membership of the society, most of the then members having since died, and others embracing part of the undersigned, having been admitted and become members thereof in accordance with the terms and provisions of said articles, all of the members of the board of elders, except said Jacob Henrici, designated and appointed in the said articles, having died, as also their successors in said board, and all of whom, as members of said board, managed the internal affairs of the society as above recited, and two of those who have been members of the board of trustees, and actively engaged in the management and transaction of the external business of the society under the authority of the articles aforesaid, either severally and in their own names as trustees, or jointly with the co-trustee, Jacob Henrici, still surviving and in their joint names as such trustees, making contracts, purchasing and selling personal property, investing, collecting, receiving and paying moneys of the society, settling claims, purchasing real estate, selling real estate of the society, executing and delivering deeds, assignments and transacting all the external business and affairs of the society have also died.

And Whereas, Said society, and the undersigned, the present members thereof, have received and enjoyed, and do now enjoy the benefits and advantages resulting from the management and regulation of the internal affairs thereof by the board of elders as aforesaid, as also the benefits and profit of the external business and affairs thereof, managed and transacted by those who constituted the board of trustees as

aforesaid, and it is deemed right and proper that we the undersigned surviving members of the society, who entered into the articles and compact aforesaid, and the others who have since become members as aforesaid, should recognize, approve and reaffirm said articles, and approve and confirm what has been done for and on behalf of the society, under and in pursuance thereof.

NOW THEREFORE, Be it known to whom it may concern, that we, the undersigned, the surviving and present members of the Harmony Society, at Economy, aforesaid, and all the present members of said society, do severally, and each for himself, covenant, grant and agree to and with the others, and each and all the other members aforesaid, and signers hereof and with those who shall hereafter become members as follows, that is to say:

1st. We do hereby solemnly recognize, approve, reaffirm and continue the articles of agreement and compact of our association entered into at Economy, on the 12th day of August, 1847, and recorded in the recorder's office of Beaver County, as set forth in the preamble hereto and declare the same to be in full force, as a whole and all parts thereof, including the agreements and compacts mentioned and designated in the first article thereof, as fully and to the same extent as said mentioned agreements were recognized and established by said first article.

2nd. We do hereby approve and confirm any and all acts, matters and things done and transacted by the Board of Elders of the Harmony Society, as the same was from time to time constituted, since the date of the articles aforesaid, establishing said Board, and we hereby ratify and confirm the appointment of the present Board of Elders, to wit: Jacob Henrici, Ernest Woelfel, Michael Staib, Johannes Scheid, Moritz Frederick, Gottfried Laupp, J. Jacob Niclaus, Herman Fishern and John S. Duss.

3d. We do also hereby approve, ratify and confirm all acts, matters and things done, transacted and performed by the Board of Trustees of the Harmony Society, constituted first, of Romelius L. Baker and Jacob Henrici, until January 11th, 1868; afterwards, and from that date until January 21st,

1890, of Jacob Henrici and Johnathan Lenz, and since the last mentioned date, of Jacob Henrici, Ernest Woelfel, hereby ratifying, confirming, holding, declaring as good and effectual in law and in equity, all acts, matters and things done, transacted and performed by each and all of the said trustees in the purchase and sale of personal property, and in the making of contracts, investment of funds, purchase, sale and transfer of stocks, bonds and other securities, loaning or borrowing money, collection and payment of monies, settlement or compromise of claims or disputes, in the institution and prosecution of legal proceedings, in the employment and discharge of attorneys in fact and at law, in the making of donations, in the purchase of real estate, and in the sale thereof, in the execution and delivery of deeds, conveyances, transfers and assignments, whether of and pertaining to real or personal estate, in the execution or delivery of notes or obligations of any kind, and generally all acts heretofore done by said trustees, in the conducting, managing and transacting of the business of the society, and whether done by said trustees or either of them, severally and in his own name as trustee, or jointly in the joint names of himself and his co-trustees.

4th. We do also hereby approve and confirm the acts of the Board of Elders in the appointment of Ernest Woelfel, as co-trustee with Jacob Henrici, and declare said Jacob Henrici and Ernest Woelfel, the present Board of Trustees, authorized and empowered to do, perform and transact any and all business of the society, and to the full extent of the powers and authorities mentioned and designated in and conferred on the Board of Trustees, in and by the articles hereinbefore mentioned, made and entered into August 12th, 1847, and recorded as aforesaid.

In witness whereof we have hereunto set our hands and seals this 30th day of April, A. D. 1890.

JACOB HENRICI,
ERNEST WOELFEL,
JOHN S. DUSS,
AND OTHERS.

Duly acknowledged.

EXHIBIT "G."

WHEREAS, The undersigned, being all the members of the Harmony Society, at Economy, Beaver County, State of Pennsylvania, deem it proper and desirable that there should be some suitable, proper and certain evidence of membership in said society, and that the rights and powers of the trustees of said society should be more clearly defined and understood;

NOW, THEREFORE, While we do hereby ratify and confirm the Articles of Agreement and compacts of our Association entered into at Economy on the 12th day of August, 1847, and those of April 30th, 1890, confirmatory of the former and ratifying the acts of the Boards of Elders and Boards of Trustees, both of which Articles of Agreement are recorded in the Recorder's office of Beaver County, and are hereby reaffirmed, we and each of us, present members of the said Harmony Society, do hereby state and declare that this declaration, agreement and grant of power is, and is to be taken and considered, as supplementary to the agreements, compacts and articles above mentioned, to-wit:

1st. The present members of this society and association are Jacob Henrici, John S. Duss, J. Jacob Niclaus, Moritz J. Fredericks, Gottfried Lauppe, Johannes Scheid, Franz Gillman, Hugo Miller, Conrad Hermansdoerfer, Julius Stickel, Edward Killerman, Henry Feucht, B. Feucht, Blasius Platz, Sigmund Stiefvater, Regina Lautenschlager, Christina Rall, Karoline Molt, Katharina Nagel, Elizabeth Beck, Lena Rall, Thirza Feucht, Rebecca Feucht, Margaret Feucht, Christine Hoerer, Susie C. Duss, Bertha Geratch, Pauline Stickel, Johanna Hermansdoerfer, Maria Diem, Dorothe Hoehr, Philipina L. Wolfangle, Gottlieb Reithmuller, Samuel Sieber and Elizabeth Sieber, and no other person or persons than those above named is a member thereof, and that for the future it is agreed that before any person can become a member of the Harmony Society, he or she shall sign or make his or her mark to his or her name on the roll of membership,

which shall always be kept in the record book of the society, which book was established by the aforesaid agreement of 1847, and is the same in which are entered copies of said articles above mentioned; and shall also sign a written agreement in said book binding himself or herself to the observance and performance of all and singular the declarations, stipulations and agreements of the members of the society as contained in the several written articles above mentioned and in these articles, and the book aforesaid containing said roll of membership shall be the sole and exclusive proof of membership in the society.

2nd. It is hereby declared and agreed that the present board of elders of said society are Jacob Henrici, John S. Duss, Johannes Scheid, Gottfried Lauppe, Moritz J. Fredericks, J. Jacob Niclaus, Conrad Hermansdoerfer, Hugo Miller and Gottleib Reithmuller; and the present board of trustees of said society are Jacob Henrici and John S. Duss. And we do hereby grant and assign to said trustees and their successors, and do hereby agree and declare that the legal title to any and all the property, real and personal, owned or possessed by said society, wherever the same is situated or found, is, and is to be taken and considered as fully vested in the said trustees, Jacob Henrici and John S. Duss, above named, and held by them in trust for the society, but with full and complete power and authority in said trustees, their survivors and successors, at such time or times as they may deem advisable, and for the best interests of the society to sell and dispose of the same, or any part or parcel of the same, and for this purpose to make assignments or bills of sale of said personal estate, and to execute and deliver deeds in fee simple, or for any less estate, for any or all said real estate thus sold. This declaration and power to apply to and embrace any and all lands wherever situated now or hereafter belonging to said Harmony Society, or held in trust for said society, the title to which may be, or stand, in the name of Frederick Rapp, or George Rapp, or of R. L. Baker and Jacob Henrici, trustees; Jacob Henrici and Jonathan Lenz, trustees; Jacob Henrici and Ernest Woelfel, trustees; Jacob Henrici and John S. Duss, trustees; or any or either of them

and their successors, and any board of trustees hereafter appointed.

3rd. To remove any possible doubt or misunderstanding as to their right and power in reference thereto, we hereby give and grant to said trustees, above named, Jacob Henrici and John S. Duss, and to either of them and their survivor and successors, full power, from time to time, and at such time as they or either of them may deem for the true interest of the society to borrow such sum or sums of money for such length of time, at such rates of interest and upon such other terms as the said trustees, or either of them, or their survivor or successors, may deem advisable; and jointly or severally to give notes, bills of exchange, bonds, due bills or other evidences of debt therefor, and to secure such loan or loans of money, bonds, notes, due bills or other evidences of debt by pledge or assignment of any stocks, bonds or other personal property of any kind now belonging, or that may hereafter belong to said society, and by mortgage or mortgages upon, or deeds of trust of, all or any part of the real estate and leaseholds of real property, which said society now own or possessess, or hereafter may own or possess, and for this purpose the said trustees, above named, or either of them, their survivor or successors, shall have full power and authority to make, execute and deliver any and all such instruments and conveyances as may, in their judgment, be reasonably necessary to enable them, or either of them, to carry the foregoing powers into full effect.

And in the execution of any instruments or conveyances in writing or otherwise that may be or so become reasonably necessary in the exercise or execution of any of the powers hereinbefore granted, either of said trustees, their survivor or successors may execute the same, and for that purpose may sign the joint names of said trustees, as in the following form: "Jacob Henrici and John S. Duss, Trustees," or "Henrici and Duss, Trustees," by (name of Trustee executing) "Trustee."

IN WITNESS WHEREOF, we have hereunto set our hands and seals this day of December, A. D. 1892.

Supplemental Brief.

AGREEMENT OF 1836.

QUESTIONS OF NATURE OF SOCIETY'S TITLE TO ITS PROPERTY.

PUBLIC POLICY.

MR. DUSS.

APPELLANTS' CHANGE OF BASE.

The appellants now, for the first time, claim that they rely *solely and only* upon the agreement of 1836 through and by means of which they can gain any portion of the common property.

Thus, upon page 65 of their brief, they say:

> "Upon this agreement the plaintiffs rely solely as vesting in the members of 1836 and those becoming members at subsequent dates, the reversion of property upon the dissolution from any cause of the Harmony Society."

Again, on page 71 of their brief, they say:

> "That each of the plaintiffs is an heir and legal representative of an ancestor dying in the society since 1836—such ancestor being by the agreement of 1836 an equal owner of said joint and indivisible stock."

Again, on page 74 of their brief, they say that the property of the society

> "must go to those who are equally interested, under the articles of 1836, in the joint and indivisible stock therein created, as donors of that fund to the trustees, to them who live and to the heirs and legal representatives of those who are dead." * * * "While, however, we do not base our right of inheritance upon any contributions of our ancestors to the society, prior to the articles of 1836, yet it is important to consider those articles in order to ascertain what the principles and purposes of the society were and continued to be till its dissolution; its form of government; the nature and character of trusts created, their duration, and the future disposition of the property controlled by said trusts."

The agreement of 1836 was primarily and chiefly intended to strike out the 6th article of the agreement of 1827, which provided for the return to the seceding member of the value of all his property brought into the society.

It, therefore,

(*a*)—Annulled the 6th article and made it void;

(*b*)—Enacted article 2 as follows:

> "All the property of the society, real, personal and mixed, in law or equity, and howsoever contributed or acquired, shall be deemed now and forever joint and indivisible stock. Each individual is to be considered to have finally and irrevocably parted with his contributions, whether in lands, goods, money or labor, and the same rule shall apply to all future contribution whatever there may be;"

(*c*)—Enacted article 3 as follows:

> "Should any individual withdraw from the society or depart this life, neither he, in the one case, nor his representatives, in the other, shall be entitled to demand an account of said contributions, whether in lands, goods, money or labor, or to claim anything from the society as matter of right. But it shall be left altogether to the discretion of the superintendent to decide whether any, and if any, what, allowance shall be made to such member, or his representative, as a donation."

No portion of the agreement of 1827 was changed except the 6th article, unless such change be introduced by articles second and third just cited.

We have already considered at length and analyzed the agreements of 1805 and 1827, (pages 25 to 44 of this brief), with the conclusion that each joining member of the society parted with all right, title and interest to his contributions

and to the present and future property of the society. He was merged into and became a member of the community. All the members constituting the society covenanted with each other that each was entitled to all the rights and privileges of a member as stipulated in the agreement of 1827, including schooling, clothing, food, etc., but each member, by the agreement of 1827, in its very words, (see pages 38, 39 and 40), stipulated that all the property was to be the property of the society, and that no one of the members was entitled, *individually*, to any part thereof but to the use of the same as a member of the society.

Surely if human language can plainly express a meaning, this agreement said that by death or retiring from the society

> "neither he, in the one case, nor his representatives, in the other, shall be entitled to demand an account of said contributions, whether in lands, goods, money or labor, or *to claim anything* from the society as matter of right. But it shall be left altogether to the discretion of the superintendent to decide whether any, and if any, what, allowance shall be made to such member, or his representatives, as a donation."

How is it possible for the appellants to derive a title through this agreement of 1836?

They now claim to represent:

(*a*) Persons who died in the society;

(*b*) Persons who left the society.

How can they, against the plain words of this agreement, claim to recover anything whatever?

Those words are:

> "Neither he in the one case *nor* his representatives in the other, shall be entitled to demand an account of said contributions whether in land, goods, money

> or labor, or to claim anything from the society as matter of right."

The argument of the appellants is that because in this agreement in article second it is said,

> "All the property of the society, real, personal and mixed, in law or equity and howsoever contributed or acquired, shall be deemed now and forever *joint and indivisible* stock,"

that this, in some way, gives them an interest in the property which they did not gain under the agreements of 1805, 1821 and 1827.

And they claim this, also, in the face of the above provisions and the other portions of this article, which says that

> "each individual is to be considered to have finally and irrevocably parted with all his former contributions, whether in lands, goods, money or labor, and the same rule shall apply to all future contributions, whatever they may be."

If each individual has forever parted, as this agreement says, with all his former contributions, whether they be represented by lands, or goods, or money, or labor, and that same rule shall apply as to all *future* contributions, how is it possible for his heirs or representatives to gain, after his death or withdrawal from the society, any title to this property?

The agreement does say that the entire property shall be considered as

> "joint and indivisible stock."

But how does this change the equitable title and right which the society always had to its property? Was it not always joint and indivisible? Did not all the covenants and all

the agreements provide that a party dying or leaving, lost all his right, title and interest in and to the common property except that, under the agreement of 1827, he might have returned to him the value of his contributions?

The agreement of 1836, saying that it shall be regarded as as joint and indivisible stock, in no way changed the title by which it was originally held under the agreements of 1805 and 1827, and the individual member and his heirs or representatives, after his death or withdrawal from the society, gain no other or greater right than they had under the agreements of 1805 and 1827.

Indeed, the language of the agreement of 1836 seems more specifically to bar out these plaintiffs than that of the other two agreements.

Nor should it be overlooked that, as the society changed in membership from 1805 down to this present date, the members constituting at any one time the society changed their agreements, bought and sold property, made donations, and acted as if they were—as, indeed, they were—the actual owners of all of its property. This was, as we have said before, a practical construction of the agreements which should now be of controlling influence.

Topliff vs. Topliff, 122 *U. S.*, 131.

APPELLANTS' POSITIONS AS TO THE NATURE OF THE TITLE BY WHICH THE SOCIETY HELD ITS PROPERTY.

The appellants admit that *prior* to 1836 no one of them contributed any property of any kind to the society, and the Master has found that no one of them did *since* 1836.

Now, if this be so, let us grant, for the sake of the argument, that the appellants are right on page 90 of their brief, i. e., that the society could not take any title at all to its property,—or that any trust created for it is void,—or that if the trusts are good, they violate the rule against perpetuities—or that the title is a base or conditional fee—how, in any one or all these contingencies, are the appellants benefited?

If the society has no title to its property, the appellants can claim none, for it is only through such society that it can reach the property.

If the trust created for the society is void, or if the trust is good but violates the rule against perpetuities, or if the title is merely a base or conditional fee, how is it possible for the appellants to benefit thereby?

No one of the appellants contributed any property whatever.

If the property reverts, it would be to the original grantors, and no one of the appellants is a grantor.

It seems extraordinary the efforts the appellants have made to attack the title of the Harmony Society and its trustees to

this property, for it is only through the society, as the *bona fide* owner of the property, that the appellants can recover at all. If they could succeed in demonstrating that the title was defeasible and not good, they would effectually, as the Master says, destroy their own case.

BRIEF REVIEW OF APPELLANTS' POSITION AS TO TITLE.

The appellants have as heretofore stated collected on pages 90 and 91 of their brief their different theories by which they seek to strike down the title of the Harmony Society to its property. We have heretofore answered—see index to our brief—as has the Master and the Court below—each one of these theories:

(I)—The title to the real estate was originally vested in fee simple in Frederick Rapp—then in George Rapp—and then in the Trustees Henrici and Baker and others as hereinbefore stated, the title to the personal property was also so vested.

(II) As we have seen the trust in favor of the society is not invalid.

(III) The trusts do not violate the rule against perpetuities. The right of the trustees, in whom is vested the absolute title at any time to sell all of the property, real and personal, freed and discharged of and from all trusts, is undoubted.

When the Rapps held as agents there could be no question, for this right clearly appears, not only by the original conveyance to each in fee simple, but also in his declaration of trust.

Record, vol. 3, page 619.

See as to George Rapp:

Record, vol. 3, page 613.

Article VI. of the Agreement of 1847, page 312 of this brief, gives the most ample power to sell and convey at any time to the trustees.

All the property of the society is freely alienable at any time. It is true that, as in the case of all trusts, the proceeds of the trust property is necessarily affected by the trust and becomes itself trust property, but this trust property is just as freely alienable as was the property by whose sale it arose. Its future sale is not tied up or prevented. There is no future estate sought to be created. The trustees and society together have both the legal and the equitable title and may freely sell or give away or otherwise dispose of all the property. At any time all the members of the society, with the trustees, could terminate the existence of the society and so forever terminate and end the trust. What would be done with the property it would be for the then members to say.

See on this very question Geosele vs. Bimler, 14 *Howard*, 590.

In Nachtrieb vs. the Harmony Society, 3 *Wallace, Jr.'s, Report*, 82, 84, 85, Judge Grier's opinion, holding expressly that the then members owned all the property, will be found.

Speidel vs. Henrici, *et al.*, 120 *U. S.*, 377.
Speidel vs. Henrici, *et al.*, 15 *Federal Reporter*, 758.

Judge McKennan's opinion is not printed in the Supreme Court Reports, but is in the *Federal Reporter* and from it we quote as follows:

> "The trust alleged here was instituted for the equal and exclusive benefit of the members of the Harmony Society. It was part of the religious as well as secular polity of the society. *Fellowship in the society was the only recognized title to participation in its benefits. When that fellowship ceased, from whatever cause, all further interest in the trust and all the privileges of membership were necessarily lost, and were denied.* From that time forth, the relations of the withdrawing member and the society, as to all the incidents of membership, were adverse. This was the attitude of the complainant and of the society towards each other. He adjured a tenet of its religious creed, and proposed to violate one of its fundamental rules. He was, therefore, compelled to leave it, *and thenceforth ceased to exercise any of the privileges or to enjoy any of the benefits of membership, but was, as to all these, placed in adverse relations with it.*"

(IV.) That the title is not a bass or conditional fee see *ante*, pages 67 to 73—and also pages 86 to 93.

NATURE OF THE TITLE THE TRUSTEES AND MEMBERS OF THE SOCIETY HAVE.

The original deeds for the property of the society were all made in fee simple to Frederick Rapp.

In no instance was there any trust or use declared on the face of the deed. The title was absolute and unqualified in Frederick Rapp.

Frederick Rapp, as we have stated, did declare that he held the property in trust for the society by a separate paper.

All the other conveyances to George Rapp, who succeeded Frederick Rapp as the agent, and then to the different trustees appointed under the agreement of 1847, gave an absolute title, in fee simple, and without any trust declared.

The title to all the real estate is conveyed to the trustees in fee simple. It is, in each instance, an absolute unqualified estate in fee, without limitation of any kind. It is not conveyed upon any condition of any kind. No one of the members of the Harmony Society ever conveyed, so far as this case shows, any real estate to the society, but, if any one did, it was just as absolute a conveyance, as shown by our analysis of the different agreements.

The grantors of all the real estate parted with all their title to the tracts of land conveyed. They were conveyed to the trustees and their heirs.

It is true that, beginning with the original declaration of Frederick Rapp, in 1834, (Record, vol. 4, p. 619), followed by George Rapp's appointment in 1834, (Record, vol. 4, p. 613), and this by the agreement of 1847, (see page 312, appendix to this brief), the agent and trustees in each instance declared that the property conveyed to them

> "is and shall be deemed the common property of said society."

The

> "*said* society"

as the agreements all show, were the persons who were in membership and constituted part of it.

McKennan, C. Judge, in the Speidel case, 15 *Fed. Rpts.*, 753, speaking of what this trust was, and for whom, said:

> "The trust alleged here was *instituted for the equal and exclusive benefit of the members of the Harmony Society.* It was part of the religious as well as secular policy of the society. *Fellowship in the society was the only recognized title to participation in its benefits. When that fellowship ceased, from whatever cause, all further interest in the trust and all the privileges of membership were necessarily lost and were denied.*"

Mr. Justice Gray, in the same case, said: (120 *U. S.*, 377.)

> "The trust on which Rapp and the defendants (the trustees) as his successors held the common fund of the Harmony Society is described, in one place in the bill, as for the members of said families, and the contributors of said fund, and for their common benefit, that is to say, as is clearly explained by what goes before, in trust for their common benfit *as a community*, living together *in the community*, working for the community, subject to the regulations of the community and supported by the community."

The Harmony Society, composed of those who at the time were its members, were the *cestui que trustents* of the trustees, in whom stood the absolute fee simple legal title to the property. Each one of these members, so long as, *and only so long as*, he was a member was one of the *cestui que trusteuts*. Whenever he ceased to be a member the *use* shifted from and left him, *because* the very foundation and condition of its existence were taken away. When one became a member of the society, the *use* for him sprang up and *shifted* so as to include him among the members. When he ceased to be a member the very agreement he signed, by which he became a member, terminated and ended the trust or use.

In 2 *Washburn on Real Property*, page 669 (fifth edition), title "Shifting Uses," he uses, as an illustration of them, as follows:

> "An example of a shifting use, as given by the courts, is a grant to incorporated proprietors of land on which it was intended to build a church, *habendum* to said proprietors, &c.; and to each and every person who may hereafter become the lawful owner and proprietor of a pew in said house to be built thereon by said proprietors, the use would legally shift to those who should thereafterwards become pew holders."

In the society's agreement of 1847, provision is made for the admission of future members by the Board of Elders. (See Article III., page 310, of this brief.)

Under the original agreements, always, by consent of all the members, new members could be admitted.

To the trustees, say a parcel of land is conveyed on April 1st, 1870; they hold the same in trust for the members of the society as such, so long as each continues to be a member. Each member was and is a *cestui que trust.* As a part of and a member in this society each had such a title as would enable him to compel the use of the real estate for the purposes of the society and the fulfillment of the covenants contained in the written agreements of all the members.

When a new member came in, a use *shifted* to or sprang up for him, and he became, so long as he was a member, one of the *cestui que trusts.*

When any one left the society and thereafter ceased to be a member of it, the use or trust he had shifted from him to his fellow-members of the society. As Judge McKennan says *ante* the trust was

> "for the equal and exclusive benefit of the members of the Harmony Society."

As Judge Gray, in the same case, said, *ante:*

> "in trust for their common benefit as a community, living together in the community."

See, also, *Kerr on Real Property*, vol. 2, sections 1662, 1663.

Quite an instructive case is that of Second Congregational Society vs. Waring et al., 24 *Pickering*, 304, which was again considered in the case of Packard vs. Ames, 16 *Gray's Reports*, 328.

The opinion in the latter case is short, and we quote it as follows:

> "Bigelow, C. J. The construction of the deed from Joseph S. Packard to Micha Packard and others, proprietors, was considered by this court in North Bridgewater Congregational Society vs. Waring, 24 *Pick.*, 304. It was there held that an estate in fee vested in the grantees to the use of the proprietors of pews therein designated, the use shifting to such as should thereafterward become pewholders. No intimation was there made that the conveyance was on a condition subsequent. Nor, on careful consideration of the terms of the grant, can we see any valid ground for holding that such is the true interpretation of the deed. There are no apt or proper words to create a condition; there is no clause of re-entry or forfeiture. The only words which bear any semblance of an intent to restrict the title conveyed by the deed are found in the habendum. These are merely that the grantees, the proprietors of pews, should hold the estate for the purpose of erecting and maintaining thereon a house for public worship. But we know of no authority by which a grant declared to be for a special purpose, without other words, can be held to be on a condition. On the contrary, it has always been held that such a grant does not convey a conditional es-

> tate, unless coupled with a clause for the payment of money or the doing of some act by the grantee, on which the grant is clearly made to depend. Without some such clause a grant for a specific purpose can be held at most only to create a trust, but not an estate on condition. *Co. Lit.*, 203a, 204a, 204b, 214b. *Shep. Touchst.*, 123, 124, 133; Cowper vs. Andrewes, *Hob.*, 41; Norfolk's Case, *Dyer*, 138b. Exceptions sustained."

The Supreme Court of Pennsylvania in Methodist Church vs. Old Columbia Co., 103 *Penna. St.*, 614, cites and approves this case.

ACTS OF LIQUIDATION.

On pages 168 and 169 it is claimed that it was the duty of Mr. Duss, as trustee, to repudiate the debts of the Economy Savings Bank. This bank had been organized by Henrici and Lentz, trustees, and, owing to the faith in their honesty and the reputation of the Harmony Society, thousands of people had invested, amounting in the aggregate to over one million dollars.

The trustees had the undoubted power under the Act of 1847 to organize and carry on the bank. Even if they had not, they had done so with the consent and approval of every member of the Harmony Society. There is not now, and there never has been, a member of the society who objected to the payment of those debts, and surely it does not lie in the mouth of the appellants, who never were members, to raise that question.

The depositors, when Mr. Duss took control, were about four thousand (4,000) persons. Imagine the wide spread devastation of a policy of repudiation!

PARTITION OF PROPERTY.

The payment to retiring members is said to have been a liquidation and the dissolution of the society.

As we have seen, the members who at the time constituted the society were the absolute owners, through themselves and their trustees, of all its property, and they might at any time

dispose of it. The idea that, because they gave to certain retiring members certain sums of money, THEREFORE, this was a dissolution of the society, is difficult to see. If the society owned the property they might do with it as they saw fit, and, no matter to whom or for what they gave their property, it was their own, to do with as they liked.

Besides the agreement of 1847 authorized the donation to retiring members.

See this question treated *ante* and also considered by the master and the court below.

THE UNION COMPANY.

Under the agreement of 1847 the trustees had the power to change realty into personalty, and personalty into realty.

For reasons explained by Mr. Brooks and Judge Hice it was deemed advisable to convey the title to the real estate to the Union Company, a corporation of the State of Pennsylvania, giving to the trustees of the Harmony Society all the capital stock except so much as would make eligible members of the Board of Directors, the stock loaned for this latter purpose being in the shape of certificates endorsed in blank and left with the Harmony Society.

The society after the conveyance owned the stock, *all of it*, and, therefore, owned all the assets of the Union Company. They did not convey to the Union Company as a part of the liquidation, and it in no way deprived the society of any portion of the property which theretofore the society had owned. It was a mere change in the mode in which the title was held.

See this also treated *ante* at length; and also by the master and the court below.

CELIBACY.

The claim of the appellants on page 83, being that Mr. Duss and his wife have abandoned celibacy, is wholly untrue.

They do live at the Great House, as did Father Rapp and his wife in his day, but there is absolutely no testimony that they live together as man and wife.

Henry Feucht testifies, page 463, vol. 2 of the Record, that he was born during the time that his father and mother were members of the Harmony Society and that in addition thereto his brother and sister were also born during that time.

Page 464.

> "Q. Was that during the time that your father and mother were members of the Harmony Society, that they had four children?
> "A. Yes, sir."

Yet it is now argued by appellants that celibacy was always a cardinal doctrine of the society.

VALUE OF THE PROPERTY OF THE HARMONY SOCIETY.

Without any evidence to prove it the appellants have placed enormous values on the land owned by the company as well as on its other property. It is difficult to say exactly

what the property is worth, but certainly it is within the bounds of reason to say, that if the debts of the society were paid the society would not be worth one-half of the amount the appellants allege, and, probably, not one-fourth of that amount.

ARE THE HARMONY SOCIETY AGREEMENTS AND THE MODE OF LIFE OF ITS MEMBERS CONTRARY TO PUBLIC POLICY.

The appellants allege in their brief (pages 87 to 90) that the agreements and mode of life of the society are against public policy, and they specify the following reasons:

That the jurisdiction of the patriarchy extends to municipal control in a manner antagonistic to the constitutional system of the State respecting communities.

That the civil rights of the individual are vested in the patriarch.

That there can be no individual wealth, and, therefore, no "individual contracting."

That the obligations of civil duty are controlled by the patriarch.

That the scheme involves a system of labor which would bring disastrous competition against free labor and is allied to slavery.

> "That the members are concreted into an individual designated as a community, and hence they are not equal before the law, nor are they free, nor does their situation at all bring them within the declarations which are the foundations of the government."

That if the scheme should be successful for a long period, the society would absorb vast amounts of property, and thus defeat the collateral inheritance tax and the law in reference to the distribution of the estates of descendants.

That a community of persons thus isolated and differentiated in all the functions of civil life is against the policy of the law;

That the law condemns celibacy and the non-intercourse of married persons;

That the law also condemns a community of goods, it is socialistic;

That the society could not be incorporated under the laws of Pennsylvania;

Under the agreements each individual had no assignable stock;

The society concentrates, in itself, the wealth which individual contributions and labor pour into its coffers;

And that for these, and many other reasons, the trust in favor of the society must be declared void.

THE ABOVE VIEW IS CONTRADICTORY OF THE AVERMENTS OF THE BILL,

Section 8th of that bill says:

> "That the Harmony Society, from the period of its inception until a recent date, adhered rigidly to its plan of government, *and became illustrious and highly respected by reason of its sincere advocacy of the equality of man, its espousal of the highest principles of Christianity, and its honesty and benevolent administration of all public functions*, whether in the management of its internal affairs or in its many transactions with the citizens of Western Pennsylvania."

AGREEMENTS AND MODE OF LIFE NOT CONTRARY TO PUBLIC POLICY.

Every man and woman in the United States may freely live and agree with each other to live the life that he or she prefers, provided that such mode of life is not prohibited by the Constitution or the laws enacted thereunder.

What portion of the Federal or State Constitution, or of the laws of the State of Pennsylvania, or of the United States, do the agreements of the Harmony Society contradict or its mode of life infringe?

In one aspect it may be regarded as analogous to a partnership; but what law forbids men and women forming a partnership with agreements similar to those of the Harmony Society?

What law forbids the practice of celibacy?

What law forbids a man or woman contracting to work for a partnership or work for a community for boarding, clothing, etc., when he or she so long as they remain in the community is a part owner of the wealth created by his or her work and the work of everyone else?

In what respect is the creation of a Board of Elders, giving them supreme authority as to the internal regulations of the society, contrary to any law? Somebody must be governors or rulers. Indeed, under the corporation laws of Pennsylvania and the limited partnership laws such management is committed to the Boards of Directors and Managers.

If the corporation law provided that a Board of Managers or a Board of Directors should remain in office for twenty years instead of one, how would that conflict with the laws of Pennsylvania or of the United States?

The Harmony Society agreements do not pretend to interfere with any of the laws of the State in reference to the State control of all the civil and political functions of life.

The town of Economy is located in a township called Economy, and it is, so far as the State laws are concerned, governed and controlled exactly as any other township in the State. Each individual member of the society has the same civil and political rights to vote for all Township, County, State and United States officers as any other citizen of Pennsylvania.

In what respect does the community of goods violate any constitutional provision?

All the property so communed is liable to the general laws of the State governing its acquisition, sale, descent, and distribution. It is subject to taxation for United States, State, County, and Township purposes.

The agreements of the Harmony Society do not, in any way, exempt a man from or take from a man any one of his civil or political duties or rights.

There is no limit as yet under our constitutions to the acquisition of wealth, and nature, working through general laws, has proved that the ideas of vast and practically unbounded wealth to be gained by a society of this kind are false. The wealth of the Harmony Society, as the testimony shows, has been grossly over-estimated, and, to-day, is not one-half of the value of $3,000,000, put upon it by appellants.

Neither the Shakers, Separatists, Zoarites, Society of Believers, Oneida Community, or the Economy Society, have made such a brilliant worldly success, especially in America,

as would constitute a menace, by the acquisition of vast wealth, to the polity of the State of Pennsylvania or of the United States.

Certainly, the Harmony Society has been a great blessing to Western Pennsylvania. It has built up industries, built railroads, cut down and marketed forests, laid off farms, built towns, and, in various ways, added to the progress, development and civilization of our people.

Each member of the society, while he remained a member, had an interest, as a use or a trust, in the property, and he, undoubtedly, could have called his fellow members and his trustees to an account if they violated the good faith pledged to him by the articles of agreements creating the constitution of the society.

The appellants have not cited a single case sustaining their position that these agreements are against public policy, but, on the contrary, as we have seen (pages 221 to 224 of this brief), the Supreme Courts of Pennsylvania, Massachusetts, Maine, New York and Ohio, the Supreme Court of the United States, and the Circuit Court of the United States, have all affirmed the validity of the Harmony Society agreements and agreements framed similar thereto.

CHARGES AGAINST MR. DUSS.

The charges in the bill of complaint against Mr. Duss individually are many and severe.

If the court will read paragraphs 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 and 26 of the bill it will find a collection of charges, *each and every one* of which the master has found to be false, and the court below has affirmed the finding of the master.

With a maliciousness suggested by personal hatred, the plaintiffs have been induced to insert in the bill these outrageous charges against Mr. Duss, and they, when called upon the stand, each and every one of them, admitted that they had not any personal knowledge as to the truth of any one of these charges.

The charges contained, among other things, an averment (paragraph 12 of the bill), that Duss was the friend and confederate of Dr. Cyrus Teed, who was a notorious libertine and presided over an institution in Chicago filled with depraved women, whom he called his angels, and he was designated as the "Messiah," and then the averment is:

> "From the entrance of said Duss into the Harmony Society it had been his design to admit the said Teed and his entire collection of notorious men and women into the Harmony Society, thereby converting this old and religious celibate society into one closely allied with the free love doctrines of the Oneida and Mormon communities."

There was not a single word of testimony to justify this charge.

Not a *single* word.

The master and the court below found it utterly untrue.

But more horrible still, the bill charged Duss (paragraph 24) to be

> "a man of bad moral character, and is as such utterly unfitted to act as the Scriptural Adviser and head of a religious society; that the said Duss, in addition to holding so-called religious views utterly at variance with the creed of said society, has been guilty of gravest duplicity with his cousin, Fredericka R. Kroll, a young girl of some eighteen years of age, formerly a member of his household, in secretly taking her to the Teed residence in Chicago, where she is continually surrounded by the depraved and wanton women who compose the majority of Teed's so-called 'Angels.'"

The witness offered to support this charge was a defeated suitor against the Harmony Society. His evidence was plainly false upon its face, and he subsequently appeared before the master and admitted, and stuck to his admissions under the closest cross-examination, that the entire charge which he swore to was false, and he had been guilty of the most barefaced perjury.

His testimony had in addition been overwhelmingly met by that of numerous witnesses called by defendants, (see pages 166 to 170 of this brief.) Miss Kroll and Mr. Duss both denied it *in toto.* The circumstantial evidence demonstrated its falsity. The master found against the allegations of the bill, and the court below was so impressed with the falseness of this unsupported charge, that it went out of its way and said, after disposing of the case on other grounds, as follows, (see page 359, vol. I of the Record):

> "*And now before closing we deem it to be our duty to declare that after the most careful scrutiny of the evidence it is our judgment that the charges of im-*

morality made against John S. Duss, the senior trustee, in the twenty-fourth paragraph of the bill, are not sustained by the evidence, but are disproved."

Equally baseless are the charges against Mr. Duss that he has conspired to dissolve the Harmony Society and appropriate its property to himself and his confederates.

A brief history of Mr. Duss' connection with the society is as follows:

For many years his mother had lived in Economy, and she finally joined in 1887, at Mr. Henrici's request, the society. Mr. Duss lived, when a boy, for some time at Economy, left there and went to Mt. Union college, and afterwards went west and married and engaged in one or more occupations for his support. Jacob Henrici, the senior trustee, wrote for him to come back to Economy, and, in accordance with this letter, Mr. Duss returned with Mrs. Duss with her two children in 1889. The society appointed him as school teacher, and soon afterwards, at Mr. Henrici's and Mr. Lentz's request, he and subsequently his wife joined the society. Vacancies occurred in the Board of Elders and in the Board of Trustees, and Mr. Duss was elected to both, being chosen junior trustee on July 29th, 1890. Prior to this, the external business of the society had been controlled by Father Henrici and Mr. Lentz. They, however, kept no books, and there was absolutely no record in the society to prove what property the society had or what the society owed. Father Henrici (as his statement published, Record, vol. 3, pages 583 to 597, will show) had peculiar notions in reference to the manner in which the property of the society should be used, and the result was that he had, prior to July,

1890, dissipated much of the property of the society, and had involved it very largely in debt.

With the creation of these debts Mr. Duss had absolutely nothing to do, but, during the first year of his trusteeship, he became more and more suspicious as to the financial condition of the society, and, after a most careful examination, he discovered, to his horror, that the society was in debt about $1,500,000. Much of this debt was represented by negotiable paper and held by the different banks, and a large part of it, aggregating nearly $1,000,000, was due to the depositors of the Economy Savings Bank, which was a private partnership between Henrici and Lentz, trustees, and Judge Hice and Mr. Reeves, and was authorized by powers of the trustees under the agreement of 1847, as see *ante*.

The cash assets of the society had been pledged with the outside banks and Mr. Duss faced the peril of almost immediate insolvency unless he could realize sufficient money to control the restless creditors.

In this dilemma, James Dickson, an expert accountant, was employed to open and keep a set of books, and to arrange for a system of keeping the accounts of the society, and Judge Hice and Mr. J. Twin Brooks, Second Vice-President of the Pennsylvania Company, were enlisted for assistance and consultation with Mr. Duss.

In December, 1892, all the members of the society signed a paper authorizing the trustees, Henrici and Duss, to give a mortgage on the property to borrow money, and, accordingly, a mortgage was given to Harry Darlington, trustee, and the society obtained $400,000.00, and this was subsequently followed by a mortgage, in February, 1893, for an additional $100,000.00, and this money, with other moneys obtained from the successful handling of the cash assets of the company, enabled Mr. Duss to pay off the entire debts of the society, to save the Economy Savings Bank from closing its

door, and to save for the members of the Harmony Society a large part of their landed estate, subject, however, to the $400,000.00 mortgage above mentioned.

While the society was in this greatest peril of its life, and while Mr. Duss, with the assistance of Judge Hice and Mr. Brooks, was making every effort to provide money to pay the depositors at the Economy Savings Bank, *Henry Feucht*, one of the members of the society, on February 10th, 1893, with several other members that he induced to join him, filed a bill in equity in the Common Pleas of Beaver County, making numerous charges against Duss, and asking for the appointment of a receiver and the dissolution and distribution of its property. This bill precipitated and caused a run on the Economy Savings Bank and very nearly neutralized and defeated the efforts that Duss had made to save, at least, a portion of the assets of the society.

The case came on for hearing in the Common Pleas of Beaver County, and, after a hearing, and on March 3rd, 1893, the court refused a motion for a preliminary injunction.

The Feucht family, the plaintiffs in the bill, and especially Henry Feucht, who had been the aspirant for the position on the Board of Elders and on the Board of Trustees which Duss subsequently obtained, caused such commotion and trouble in the society that it was concluded that it was better to have them retire, even if the donation which the trustees were authorized under the agreement of 1847 to give to any retiring member was large. The Feuchts did exact from the society in its then involved condition a large amount of money, but all the other plaintiffs in the Feucht bill, being Dorothea Hoehr, Regina Lautenschlager, Edward Kellerman and Christina Rall, remained with the society, alleging that they had been induced to sign the bill by misrepresentations.

The Feucht litigation, as the master found, and as the facts fully demonstrate, stirred up the members of the Harmony society and caused a number of them to withdraw.

It is not trne that any one of them withdrew at the instance or at the request of Mr. Duss. On the contrary, it is true that Mr. Duss endeavored to prevent a number of them leaving the society, and, especially, to prevent all of those who were valuable members.

He labored with Siber, Miller, Niclaus and Fredericks to stay, but one and all, frightened by the Feucht litigation and fearing the insolvency of the society, withdrew, and, upon their withdrawal, the donations, under the agreement of 1847, were fixed approximately at but little less than the amount paid the Feuchts.

The public press became full of discussion as to the financial condition of the Harmony Society, its large debt, and the internal commotions, and reported at length the litigation in Beaver County.

The result of it all was that Henry Feucht, seeing that Mr. Duss had, at last, succeeded in rescuing the society from insolvency, and with the most bitter and revengeful feelings against him, stirred up this new litigation, and, after the litigation began, was the star witness for the appellants throughout the case.

To him the testimony traces these scandalous charges against Mr. Duss, and it is not too much to say that his personal animosity towards Duss, and his revengeful feelings, because of Duss' success in the society, were the causes of this litigation. At least, if not the causes of this litigation, the causes of the bitter charges that were made in the bill.

THE MEMBERSHIP OF THE HARMONY SOCIETY, BY REASON OF THESE WITHDRAWALS AND DEATHS, HAS DWINDLED DOWN TO NINE PERSONS. NO NEW MEMBERS HAVE BEEN ADMITTED SINCE 1893.

Not a single person, since the Feucht litigation in 1893, has applied for admission to the society. That litigation, and the trouble resulting therefrom, and the present litigation threatening the very life and existence of the society, have been an absolute bar to any desirable and responsible people applying for admission to its fold.

It is true, perhaps, that the tramps that line the highways would even now, or at any time since 1893, have come into the society, but it is equally true that they would have been undeserving members and prejudicial to the best interests of the community.

The charges and insinuations that Mr. Duss is conspiring for his own survivorship in, and thus become the owner of, all the property of the society is as baseless as were the charges in the bill as to his moral character. He is a gentleman of firm and decided character, whose task in life, it seems, has been to stand up for the right as against the most unfounded charges and slanders, and even against perjury itself. He has stood manfully for the society and the interests of its aged members who, if Feucht and the others, including the appellants, had their way, would have been turned out to starve.

Mr. Duss joined in January, 1890. He became a member of the Board of Elders at the same time, and subsequently fifteen new members joined in 1890.

In 1892 three new members joined.

In 1893 one new member.

THE DISSOLUTION OF THE SOCIETY.

We have fully discussed *ante* the question of the dissolution of this society either by common consent of its members or by the abandonment of the principles for wh'ch it was organized.

The master treated this question at length, as did the court below, and, closely examined, it utterly fails to show the least sign of the dissolution of the Harmony society.

The bill said it was dissolved in two ways:

(1) By the common consent of its members; and,

(2) By the abandonment of the principles for which it was organized.

(1) Was it abandoned by common consent, as shown hereinbefore?

There is not a particle of evidence to support this.

On the contrary, the written agreements of 1890 and 1892 expressly assert to the contrary.

(2) Has it been dissolved by the abandonment of the principles for which it was organized?

The master and the court below so fully treat of this, and we have discussed it so in detail in the prior part of this book, that it is not deemed necessary to say a word upon it here except that, upon investigation, this charge will be found just as groundless as the other charges which we have been noticing.

No. 231.

IN THE

APR 7 1902
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States

OCTOBER TERM, 1901.

No. 231.

Brf. of Moore & Leave v. Watson & Co
Appellees.
Filed April 7, 1902.

CHRISTIAN SCHWARTZ et al.
Plaintiffs Below and Appellants,

VERSUS

JOHN S. DUSS et al.
Defendants Below and Appellees.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

APPELLEES' BRIEF.

JOHNS McCLEAVE,
D. T. WATSON,
Attorneys for Appellees.

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IN THE

Supreme Court of the United States,

No. 231, October Term, 1901.

CHRISTIAN SCHWARTZ, a citizen of the State of West Virginia, ANTHONY KOTERBA, DAVID STROHAKER and ALLEN SHALE, citizens of the State of Ohio, and G. L. SHALE, a citizen of South Dakota, APPELLANTS,

versus

JOHN S. DUSS, GOTTLIEB REITHMUELLER, FRANZ GILLMAN, CONRAD HERMANSDOERFER, EDWARD KELLERMAN, JOHANNA HERMANSDOERFER, SUSIE C. DUSS, KAROLINE MOLT, KATRINA NAGEL, ELIZABETH BECK, MARIA DIEM, BARBARA BOEH, FREDERICKA MUNTZ, DOROTHEA HOEHR, REGINE LAUTERSCHLAGER, CHRISTIAN RALL, HENRY HICE and JOHN REEVES, citizens of the State of Pennsylvania, and THE UNION COMPANY, a corporation, citizen of the State of Pennsylvania.

BRIEF OF APPELLEES.

STATEMENT OF THE CASE.

The plaintiffs below, appellants here, seek, in this suit, to recover a portion of the property of the Harmony Society. They claim this, *not* because of any direct property interest either pretends to have, nor because either ever was a mem-

ber of said society, but because, as they allege, their ancestors, in more or less remote degrees of consanguinity or affinity, at some period long past, *were* members, and also because, as appellants allege, the society has been dissolved, *therefore*, they (appellants) are entitled to a share of and in the property of the society.

Thus, two main questions arise :

(1) Is either one of the appellants a part owner in the property of the Harmony Society and entitled to any interest therein, even if the society had been dissolved ?

(2) Has the Harmony Society been dissolved ?

In the master's report, both of these questions were fully discussed and decided *against* the appellants. On exceptions to this report the Circuit Court again heard arguments on both, but agreeing with the master that the society had not been dissolved, the court thought it was not necessary to pass upon the other question, and affirmed the master's report. The Circuit Court of Appeals heard both questions anew, but followed the Circuit Court—affirmed the decree below on the ground that the society was still in existence, but did not decide the other question.

We believe this court will find it more convenient, and we will be the better able to present our views with simplicity and directness, if we take up each question separately and follow the master and the court below in that direction, in-

stead of taking up seriatim the assignments of error filed by appellants. We can thus more speedily present our case and assure the court of a plain statement of what we claim, both as to facts and law connectedly on each question, and, at the same time, answer all assignments of error.

RECORD IN THIS COURT.

Counsel have agreed that the record to be printed shall consist of the pleadings, the master's report, opinions of the courts below; and the only testimony shall be

> "all agreements, articles and constitutions of the society from 1805 to 1894, inclusive, charter records of the Union company, all releases or quit-claims of retiring members between 1890 and date of filing bill."

The master's report includes all these agreements, charter records and quit-claims, and finds the facts on all controverted questions, and as none of the vast mass of testimony in the case has been printed, the stipulation aforesaid practically makes, and this in addition to the ordinary rule in such cases, the master's report conclusive. This renders unnecessary the discussion of many questions of fact which were fully discussed in the testimony before the master, the Circuit Court and the Circuit Court of Appeals. All the facts on which the questions to be decided depend will be found in the master's report.

These will not be discussed in this brief, except so far as may be thought advisable to a clear apprehension of the case.

BRIEF SKETCH OF THE HARMONY SOCIETY.

In 1804 and 1805, George Rapp and certain of his followers left the kingdom of Wurtemburg and came to the United States. They settled first in Harmony, Butler county, Pennsylvania, then moved to Wabash, Indiana, and came to Economy, in Beaver county, Pennsylvania, in the year 1825.

In the year 1805, they organized the Harmony Society by a written agreement bearing that date, which is in evidence. This written agreement was followed by another agreement made by the society in 1827; by another one in 1836; by another one in 1847, and by subsequent ones in 1890 and 1892; and in addition there was another written agreement in 1821. All of these agreements, except that of 1821, are in evidence, and are analyzed in a subsequent part of this brief.

Prior to 1847, the property of the society and its external business was in the hands of a general agent. Frederick Rapp, up until his death, held that position, and at his death, in 1834, George Rapp was appointed to take his place. The society did carry on agricultural pursuits, but, at the same time, largely engaged in many other enterprises, such as saw mills, distilleries, glass plants, etc., etc.

In 1827, the written agreement stated that the society was based on Christian fellowship, and that that fellowship included the patriarchal government and the community of goods adopted in the days of the Apostles, and also stated that the sole aim of the society was to approximate to the fulfillment of the will of God by the practice and observance of those affections and virtues which are essential to man's happiness here and hereafter.

From 1825 the possessions of the society increased largely, but in 1832 what was known as the Count De Leon conspiracy took place, which resulted in a division of the society and a distribution of a part of its assets. The agreement showing this division and distribution is dated March 6, 1832, is in evidence as Exhibit No. 82, and is signed by all those then comprising the Harmony Society.

From 1832 down until 1890, the *bill* in this case avers that peace and prosperity attended the society.

That there was this long period of prosperity during which the society

> "had rigidly adhered to its plan of government"

and had become

> "illustrious and highly respected."

That it had advocated the equality of man; had espoused the highest principals of Christianity; that its administration had been honest and benevolent, and this, whether in its internal affairs or in

> "its many transactions with the citizens of Western Pennsylvania."

In the statement of facts in the Nachtrieb case, 3 *Wallace, Jr.*, 70, it is said:

> "Notwithstanding the peculiarity of this community it had thus far been very prosperous. In the course of fifty years not one single member of the society had ever been criminally prosecuted. External order, cleanliness and apparent tranquility marked the settlement, and though occasional indiscretions occurred among the women, and certain discontents appeared to prevail among the men, it had thus far been a moral, well-governed and contented body." * * * *

ALLEGATION OF PLAINTIFFS' BILL.

The bill alleges that, in 1890, certain schemes were set on foot to wreck the society, and states those schemes to have been as follows:

(1) John S. Duss and others conspired to introduce Cyrus Teed and others into the Harmony Society, for the purpose of controlling the society, the result of which has overthrown and destroyed the government of the society, wasted its wealth, depleted its numbers, and placed the management of the society in his own hands. That prior to his joining the society, Duss was the friend and confederate of Cyrus Teed.

Yet the bill admits that this conspiracy was overthrown by the protestations of a number of members of the Harmony Society, and that after a failure of this conspiracy Duss abandoned it, but began a new conspiracy.

See paragraphs 10, 11, 12, of the bill.

(2) The new conspiracy is stated in paragraphs 14, 15, 16, 17, 18, 19, of the bill, and the purpose of it was to wreck and dismember the society, and attain for himself and confederates the entire assets of the society.

A step in this conspiracy was an agreement with Judge Hice and Reeves to use the money of the Harmony Society to pay the debts of the Economy Savings Bank; the borrowing of $400,000, and giving of the Darlington Mortgage on all the

real estate of the Harmony Society to secure its payment; the borrowing of $100,000, secured by a second mortgage on the same property; the sale of valuable dividend paying stocks in bridge companies, water companies, railroad companies, and other valuable corporations; by artifice and fraud securing most of the members to withdraw; and, paragraph 21st, by threats and intimidation inducing others to do so.

Paragraph 20 alleges the sale to the Union Company of the Economy land, but whether as part of this general conspiracy is not stated.

Paragraph 22d alleges that Duss is selling liquor without license, and 23d, that the principle of equality in the Harmony Society is no longer recognized or maintained. The 24th contains the charges as to Fredericka Kroll.

DISSOLUTION OF SOCIETY.

The averments in the bill as to the dissolution of the Harmony Society:

Paragraph 3d, the words are:

> "which has become dissolved as hereinafter stated."

Paragraph 25th:

> "That recently said Harmony Society has become dissolved as aforesaid, that all of its purposes and

practices established as aforesaid by the founders of said society, and by the ancestors of your orator, have been abandoned, * * * and that by reason of the facts herein before set forth, your orators and the said last members, except the said Duss and wife, are now tenants in common of all said lands and tenements, and entitled to partition thereof in proportion to their respective interests."

Paragraph 26th :

"* * * that by common consent this association has ceased to exist as an association, and that if the property thereof has ever been impressed with a trust, (which your orators deny as being contrary to public policy, and void in law and equity), such trust has wholly ceased, and the assets of such dissolved association have reverted to the donors thereof, among whom were the ancestors and intestates of your orators, as hereinbefore fully set forth."

THE PRAYERS OF THE BILL ARE AS FOLLOWS :

(1) A receiver ;

(2) Injunction to prevent the selling of property ;

(3) Discovery of the accounts, liabilities, debts and assets;

(4) That the Union Company be restrained from disposing of any portion of the property conveyed to it by the trustees ;

(5) That the deed by the trustees to the Union Company be declared fraudulent and void, and surrendered up to be cancelled ;

(6) That an account be stated against Duss for the losses that have been sustained through his fraud and mismanagement ;

(7) The marshalling of the assets, and a winding up of the affairs of the Harmony Society, and a division and distribution of the assets, real and personal, either by sale or partition, to and among the parties legally and equitably entitled thereto, including the plaintiffs, and that each may receive his share in severalty.

(8) Other relief.

(9) Subpœna.

ANSWER.

The answer in all material points flatly contradicted the averments of the bill. It denied all charges of fraud and improper conduct of any kind; all charges of conspiracy; denied that any one of the plaintiffs had any interest in the property of the company, and averred that the society was not dissolved, but in full life and vigor.

ISSUES RAISED.

It is clear that in order to entitle the appellants to a decree as prayed for in the bill they must prove,

(1) That the plaintiffs owned in part, or had property rights in, the real and personal estate of the Harmony Society as it at present exists, or did exist when the bill was filed, and has the present right of possession to a share of the said property.

(2) That the Harmony Society has been dissolved;

(*a*) By common consent of its members; or

(*b*) By the abandonment of the purposes for which it was founded.

MASTER AND COURTS BELOW.

The Circuit Court, upon request, and upon the written agreement of counsel on both sides, appointed a master to take testimony, find the facts and report the same, and his opinion on the law of the case to the court, giving to either side the right to except thereto.

The master took 2,907 pages of testimony (type-written), and there were in the case 96 exhibits.

After an elaborate argument, in which each side was allowed days to discuss their respective views of the case, and after the master had elaborately considered all the testimony he filed a written report, in which he found all the material facts and all the material questions of law against the plaintiffs, and recommended that the bill be dismissed.

To this report the appellants filed in the Circuit Court fifty-one (51) exceptions; and again, after a most liberal allowance of time for the oral discussion of the same, the court below (Judge Acheson) overruled all of the exceptions, approved all of the findings of the master, and made a decree dismissing the bill. The case is reported as Schwartz *et al.* vs. Duss *et al.*, 93 *Federal Reporter*, 528.

The Circuit Court of Appeals, consisting of Circuit Court Judges Gray and Dallas and District Judge Bradford, before whom the case was again exhaustively argued, affirmed the decree of the court below. The case is reported as Schwartz *et al.* vs. Duss *et al.*, 103 *Federal Reporter*, 561.

We, especially, ask the attention of this court to the findings of fact and the opinion of the master.

Every question in the case, great or small, was most carefully and elaborately examined. The report is well written, carefully considered, contains a full citation of authorities, and indeed is a remarkable document.

Judge Acheson of the Circuit Court regarded it as his duty to read, and he did read, all the evidence in the case, and his opinion discussed quite fully the salient points. He confirmed the master in every respect.

The Circuit Court of Appeals also fully considered the case, and in a unanimous opinion written by Gray, J., affirmed the Circuit Court.

We refer to these opinions of the Circuit Court and the Circuit Court of Appeals.

EFFECT OF THE FINDING OF FACTS BY THE MASTER AND COURTS BELOW.

This court said in Towson vs. Moore, 173 *United States*, 24:

> "A series of decisions of this court has established the rule that successive and concurrent decisions of two courts, in the same case, upon a mere question of fact, are not to be reversed, unless clearly shown to be erroneous."

Again, in Stuart vs. Heyden, 169 *United States*, 14, you said:

> "We will add that, as the Circuit Court and the Circuit Court of Appeals agreed as to what were the ultimate facts established by the evidence, this court should accept their views as to the facts unless it clearly appeared that they erred as to the effect of the evidence."

In Kimberly vs. Arms, 129 *U. S.*, 524, this court considered the effect of a master's report where the case was referred to him by the consent of parties, and said :

> "But when the parties consent to the reference of a case to a master or other officer to hear and decide all the issues therein, and report his findings, both of fact and of law, and such reference is entered as a rule of the court, the master is clothed with very different powers from that which he exercises upon ordinary referees without such consent ; and his determinations are not subject to be set aside and disregarded at the mere discretion of the court. * * * Its findings, like those of an independent tribunal, are to be taken as presumptively correct, subject, indeed, to be reviewed under the reservation contained in the consent and order of the court, when there has been manifest error in the consideration given to the evidence or in the application of the law, but not otherwise."

In this case the consent of the parties was in the following words (see record p.):

> "That to said Thompson shall be given as examiner and master the authority to hear and take all the testimony and to find all the issues of law and facts and to report the testimony and such findings to the court."

This court, therefore, has,

(I.)—Findings of the master on all the questions of fact and of law in favor of the appellees.

(II.)—The decree in the Circuit Court (Judge Acheson) affirming the master's report and dismissing the appellants' bill.

(III.)—The decree of the Circuit Court of Appeals affirming the decree of the Circuit Court.

In addition to all this, counsel in this court have agreed not to print the evidence save certain releases of retiring members, the charter records of the Union Company and the agreements which constitute the constitution of the society, all of which are fully considered by the master. This leaves the case in this court on the master's report affirmed as it is by the decrees of the Circuit Court and Circuit Court of Appeals.

That report stands not only for its direct finding of facts, but also for its inferences or deductions of facts from testimony. The latter, as well as the former, is distinctly within the jurisdiction of the master, and his deductions, especially when confirmed by the Circuit Court and Circuit Court of

Appeals, are not to be disregarded unless in the clearest manner manifest error is shown.

THE FIRST QUESTION.

The assignments of error, although fifteen (15) in number, can the more readily be grouped as raising but two questions:

(1) The property interest of the appellants.

(2) The dissolution of the Harmony Society.

We take up, then, the first question, which we state as follows:

(1) IS EITHER ONE OF THE PLAINTIFFS A PART OWNER IN THE PROPERTY, REAL OR PERSONAL, OF THE HARMONY SOCIETY, AND IF THE SOCIETY WAS NOW DISSOLVED WOULD EITHER BE DECREED A PART THEREOF?

The answer specifically asserts that no one of them is a part owner, and that even if the society was dissolved no one of the appellants could participate in the dissolution of its property. (See paragraphs six [6] and twenty-eight [28] of the answer.)

(*a*) No one of the plaintiffs seriously alleges that he is a member of the Harmony Society, or that he

ever was a member. The master and court below found that no one of them ever was a member. The appellants did not below, nor do they here, specifically assign error to such finding. For the convenience, however, of this court, if it desires to examine the question, we refer, briefly, to the facts given in detail in the master's Report. (Record, pp. 70 to 80)

Christian Schwartz did testify that he had intended to join the society on February 15, 1845, the Feast Day, but was unable to be present. That Father Rapp sent him in the night the Lord's Supper, which was given only to members, and that Father Rapp treated him as a member. He never did, however, join and so says. Other witnesses so testified.

Fredericka Muntz, who then was a member of the Harmony Society, testifies that Schwartz was not a member, nor was he treated as such.

In the bill the plaintiffs do not allege that Christian Schwartz was a member of the Harmony Society, but do allege (paragraph 3) that he went into the society in 1823, when three years old, and this, Schwartz explained in his testimony, was when his father and mother moved to Economy. Schwartz does not pretend *this* made him a member of the society, but his receiving the sacrament when he became of age, in 1845.

The master fully considers this question of the membership of Schwartz (see p. of record), and finds that Schwartz

"never became a member of the society."

(*B*) Each one of the plaintiffs claim a proprietary right or ownership in manner as follows:

(1) *Christian Schwartz.*

He claims through—

(*a*) His father, Christolf, and his mother, Barbara, who joined the Harmony Society, he thinks, in 1826 or 1827. The father died at Economy, still a member, in 1858; and his mother at Economy, still a member, in 1857.

They signed the agreement of 1827.

The agreement of 1836.

The agreement of 1847.

(*b*) His four sisters, as follows:

Katrina Schwartz: The date of her admission into the Harmony Society is not shown, but she died at Economy in 1888.

She signed the agreement of 1836.

She signed the agreement of 1847.

Fredericka Schwartz: The date of her admission is not shown, but she died at Economy in 1857.

She signed the agreement of 1836.

She signed the agreement of 1847.

Marie Schwartz: The date of her admission is not shown, but she died at Economy in 1878.

She signed the agreement of 1836.

She signed the agreement of 1847.

Louisa Schwartz: The date of her admission is not shown, but she died at Economy in 1888.

She signed the agreement of 1836.

She signed the agreement of 1847.

(*c*) His brother,

Joseph Schwartz: The date of his admission is not shown, but he died in 1889 at Economy.

He signed the agreement of 1836.

He signed the agreement of 1847.

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(2) *Anthony Koterba:*

He claims through—

(*a*) His father, *Joseph Koterba:* Joseph joined the society, it would seem, some time prior to 1827, and withdrew therefrom on November 13th, 1827, married and had children, and died in the State of Ohio in 1860. He left a will, and issue—three sons and one daughter.

Joseph signed the agreement of 1827.

(*b*) *Andreas Koterba:* Does not show when he joined the society, but he died May 25th, 1880, at Economy.

Andreas signed the agreement of 1827.

He signed the agreement of 1836.

He signed the agreement of 1847.

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(3) *David Strohaker:*

He claims through—

(*a*) *Christian Strohaker:* His paternal grandfather, who died in Wabash, Indiana, between 1820 and 1825.

There is no evidence that he ever joined the society, unless it be the signature to the agreement of 1805.

See also signatures to agreement of 1827.

(*b*) ——— *Strohaker:* His paternal grandmother, who died in Wabash, Indiana, between 1820 and 1824.

There is no evidence to show that she ever joined the society, nor does her name appear to any of the agreements.

(*f*) *Catharine Strohaker:* She died in Economy in 1865, and was the aunt of David Strohaker, the claimant.

She signed the agreement of 1836.

She also signed the agreement of 1847.

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(4) *Allan Shale and G. L. Shale:*

They claim through:

(*a*) Their great-grandmother, *Mary Shale*, who died at Harmony, in Butler county, Pennsylvania, and while the society was in Indiana, and therefore must have been prior to 1824.

It does not appear that Mary Shale ever signed any of the agreements of the society, nor is there any evidence to show that she ever was a member.

(*b*) Their grandfather, *Lawrence Shale*, who died in 1855. When he joined does not appear, but he seems to have signed the agreement of 1805, and he left the society between 1824 and 1826, and married.

G. L. Shale is the son of Lawrence Shale.

(*c*) *Jacob Shale*, who was the great uncle of the plaintiffs. He died in Economy in the year 1837.

He signed the agreement of 1827.

No one of the appellants was ever a member of the Harmony Society.

When the bill in equity was filed no one of the plaintiffs was or ever had been a member of the society, or in any way represented the interest of any member of the society. Their only claim was that, respectively, they were heirs at law or next of kin of some deceased member.

CONTRIBUTIONS OF PROPERTY.

No one of the appellants and no one of all their ancestors ever contributed any property whatever to the Harmony Society. Nothing whatever was thus contributed.

The master has so found, and, after argument, the court below so found.

It is in entire accord with all the evidence.

There is no proof that any of the deceased members, under whom plaintiffs claim, ever contributed any property to the society.

MASTER'S CONCLUSIONS ON PRECEDING QUESTIONS.

The master has summed up his findings on these questions in the following language (see record p.):

> "It thus appears:
>
> "1st. That *none of the plaintiffs were ever members of the society.*
>
> "2nd That all of those members of the society through whom Christian Schwartz claims as their heir signed the agreement of 1836 and 1847 and continued members until their death.
>
> "3d. That Anthony Koterba claims as heir of his father, Joseph Koterba, and his half brother, Andreas Koterba; that Joseph Koterba joined in the organization of the society, and also signed the agreement of 1827, and afterwards in 1827 withdrew from the society; and that Andreas Koterba signed the agreements of 1827, 1836 and 1847, and died a member of the society.
>
> "4th. That the grandparents of David Strohaker, viz: Christian Strohaker and wife and Mathias Rief and wife, joined the society in 1805, and all remained members until their death—all dying between 1820 and 1825, except Mrs. Rief, who died between 1830 and 1836. That his father, Christopher Strohaker, signed the agreement of 1827 and withdrew from the society in 1827. That his aunt, Catherina Strohaker, signed the agreement of 1827, 1836 and 1847, and continued a member of the society until her death.
>
> "5th. That Lawrence Schul and Jacob Schul, ancestors of Allen and G. L. Shale, joined the society in 1805; that Lawrence withdrew in 1824 or 1826; that Jacob Schul signed the agreement of 1827 and died a member, about 1837.

"5th. *That none of the parties through whom the plaintiffs claim contributed any money or property to the society.*"

These conclusions are confirmed by the Circuit Court and Circuit Court of Appeals, and *stand as the accepted and uncontroverted facts.*

PLAINTIFFS HAVE NO OTHER RIGHTS THAN AS THE DESCENDANTS OF NON-CONTRIBUTING ANCESTORS.

It seems perfectly obvious that no one of, or all of, these plaintiffs together can have a higher or greater (even if an equal, which we deny,) right to the property of the society than the respective ancestors through whom they claim.

(*a*) What, then, were the property rights of those ancestors?

(*b*) Did they survive a withdrawal from the society?

(*c*) Did they, on death, pass by descent to the heirs or next of kin, or to the personal representative of the decedent?

All of these questions may the more readily be considered together.

All depend upon the written contracts of the parties.

There is no other testimony of any kind in any way proving how, or upon what terms, or in what manner, the prop-

erty of the society is held, and what the rights or interests in that property of the members of the Harmony Society are, except the written contracts, commonly called the constitution.

Before any one could join the society he had to sign that constitution, and when he did sign it, it regulated, determined and controlled his rights of ownership and property rights in the property of the society.

Put in a little different light, the signing of the constitution was indispensable to membership in the society, and by the very act of signing the new member became a party to the written contracts, the provisions of which fixed his rights in and to the common property of the society.

The very agreement which assured him of membership in the society, and gave him whatever his rights of property were, also limited and determined the extent of those rights.

One of the reasons why the agreement of 1827 was made was, quoting its words,

> "that the conditions of membership should be clearly understood, and that the *rights* and *privileges* and *duties* of *every individual therein* should be so defined as prevent mistake or disappointment on the one hand, and contention or disagreement on the other."

The agreement of 1847 provides that

> "New members when admitted shall subscribe this agreement as the evidence of their membership and of the rights acquired by and the duties imposed upon them,"

That agreement reaffirmed the agreements of 1827 and 1836.

THE SEVEN AGREEMENTS FORMING THE SOCIETY.

Turning now to the constitution, or written contracts of the Harmony Society, we find that they are seven in number:

That of 1805 at Harmony, Butler county, Pennsylvania.
That of 1821 at Posey county, Indiana.
That of 1827 at Economy, Beaver county, Pennsylvania.
That of 1836 at Economy, Beaver county, Pennsylvania.
That of 1847 at Economy, Beaver county, Pennsylvania.
That of 1890 at Economy, Beaver county, Pennsylvania.
That of 1892 at Economy, Beaver county, Pennsylvania.
A copy of each of these contracts is given in this brief.

All of the ancestors of the plaintiffs, who were members of the Harmony Society, executed one or more of these agreements, and as all of these agreements, in substance, contain substantially the same provisions so far as the property of the society and the rights of the members in reference thereto are concerned, it is unnecessary now to refer to the facts hereinbefore given as to what contract each ancestor signed. Each signed one or more, and so far as this case is concerned it is immaterial which, because, at least for this portion of the case, all are alike in substance.

AGREEMENT OF 1805 IN BUTLER COUNTY.

The first agreement made in 1805 is as follows:

> "Be it hereby known to all who need to know it that the following agreement has this day been made and concluded between us, the subscribers of the one part, and George Rapp and his associates of the other part:
>
> "ARTICLE 1. We, the subscribers, on our part and on the part of our heirs and descendants, deliver up, renounce and remit all our estate and property, consisting of cash, land and chattels, or whatever it may be, to George Rapp and his associates, in Harmony, Butler county, Pennsylvania, as a free gift or donation, for the benefit and use of the community there, and bind ourselves on our part, as well as on the part of our heirs and descendants, to make free renunciation thereof, and to leave the same at the disposal of the superintendents of the community, as if we never had nor possessed it.
>
> "ARTICLE 2. We do pledge ourselves jointly and severally to submit to the laws and regulations of the community, and to show due and ready obedience toward those who are appointed and chosen by the community as superintendents in such a manner that not only we ourselves endeavor, by the labor of our hands, to promote the good and interest of the community, but also to hold our children and families to do the same.
>
> "ARTICLE 3. If, contrary to our expectation, the case should happen, and we jointly or severally could not stand to it in the community, and we would within a few or more years break our promises and withdraw from the community, for whatever cause it may be, never to demand any reward, either for ourselves or children or those belonging to us, for any of our labors or services rendered; but whatever we jointly and severally shall or may do we will have all done as a voluntary service for our brethren.

"In consideration whereof George Rapp and his associates adopt the subscribers jointly and severally as members of the community, whereby each of them obtains the privilege to be present at each religious meeting; not only they themselves, but also their children and families, shall and will receive the same necessary instructions in church and school which is needful and requisite for their temporal good and welfare as well as eternal felicity.

"ARTICLE 4. George Rapp and his associates promise to supply the subscribers, jointly and severally, with all the necessaries of life, as lodging, meat, drink and clothing, etc., and not only during their healthful days, but also when one or more of them become sick or otherwise unfit for labor, they shall have and enjoy the same support and maintenance as before; and if, after a short or long period, the father or mother of a family should die, or be otherwise departed from the community and leave a family behind, they shall not be left widows or orphans, but partake of the same rights and maintenance as long as they live or remain in the community, as well in sick as healthful days, the same as before, or as circumstances or necessity may require.

"ARTICLE 5. And if the case should happen as stated above, that one or more of the subscribers, after a short or a long period, should break their promise and could or would not submit to the laws and regulations of the church or community, and for that or any other cause would leave Harmony, George Rapp and his associates promise to refund him or them the value of his or their property brought in, without interest, in one, two or three annual installments, as the sum may be, large or small; and if one or more of them were poor and brought nothing in the community, they shall, provided they depart openly and orderly, receive a donation in money, according to his or their conduct while a member, or as he or their circumstances and necessities may require, which George Rapp and his associates shall determine at his or their departure.

"In confirmation whereof both parties have signed their names.

"Done in Harmony, February 15, 1805."

ANALYSIS OF THE AGREEMENT OF 1805.

Beginning with the agreement of 1805, we note it is between

> "the subscribers of the one part, and George Rapp and his associates (or society) of the other part."

The subscribers on their part,

> "and on the part of our heirs and descendants, deliver up, renounce and remit all our estate and *property, consisting of cash, land and chattels, or whatever it may be*, to George Rapp and his associates, in Harmony, Butler county, Pennsylvania, *as a free gift or donation*, for the benefit and use of the community there, and bind ourselves on our part, as well as on the part of our heirs and descendants, *to make free renunciation thereof, and to leave the same at the disposal of the superintendants of the community*, AS IF WE NEVER HAD NOR POSSESSED IT."

The language here is plain and precise:

For his part and his heirs and descendants, each subscriber does

> "deliver up, *renounce* and *remit* all our estate and property * * to George Rapp and his associates (or society), * * *as a free gift or donation for the benefit and use of the community* there, and *bind ourselves on our part*, as well as on the *part of our heirs and descendants, to make free renunciation thereof, and to leave the same at the disposal of the superintendents* of the community, *as if we never had nor possessed it.*"

The donor is bound, and he binds his heirs, to make free renunciation, so that for the future he will be as if he never had or possessed it.

Human language could hardly more clearly declare that each subscriber forever parted with any right to any property of the society—not alone that he himself contributed, but that which *any one or all of them contributed.*

The agreement is *joint.* It is

> "us the subscribers of the one part,"

and

> "George Rapp and his associates (society) of the other part."

It is

> "we the subscribers on our part * * deliver up, renounce and remit."

All of them *renounce, deliver up* and *remit* all their property to George Rapp and his associates (society),

> "as a free gift or donation."

All bind themselves to make

> "*free renunciation thereof,* and to leave the same at the disposal of the superintendents of the community *as if we never had nor possessed it.*"

It, therefore, comprises all the property which each and all contributed to the society.

The grantees were

> "George Rapp and his associates."

Who these associates were the signed agreement would show. That the original is lost, and we do not now know them, does not affect it.

George Rapp is known and certain. The covenant with him is good.

Article Second is joint and several, and is an agreement to submit to the laws of the society and show obedience thereto, and work for the same.

The idea of work and accumulation of property was in this article. Taken in connection with Frederick Rapp as general agent, trade and gain and property accumulation was not foreign to but embodied in their agreements.

Article Third is:

> "If contrary to our expectation the case should happen, and we jointly or severally could not stand to it in the community, and we would within a few or more years break our promises and withdraw from the community, for whatever cause it may be, *never to demand any reward, either for ourselves or children or those belonging to us, for any of our labors, or services rendered, but whatever we jointly and severally shall or may do, we will have all done as a voluntary service for our brethren.*"

This is joint and several.

If any one

> "withdraw from the community *for whatever cause* it may be,"

the one so withdrawing is

> "*never to demand any reward*, either for ourselves or children, or those belonging to us, for any of our labors or services rendered, but whatever we jointly and severally (have done) shall or may do we will have all done *as a voluntary service for our brethren.*"

This, it is to be noticed, is not merely each one's own labor, but it is joint and several—*the labor of all and of each.*

Then follow the covenants and promises which George Rapp and his society makes to the subscribers.

> "In consideration whereof, George Rapp and his associates adopt the subscribers jointly and severally as members of the community, *whereby* each of them obtains the privilege to be present at each religious meeting; not only they themselves, but also their children and families, shall and will

receive the same necessary instructions in church and school, which is needful and requisite for their temporal good and welfare as well as eternal felicity."

George Rapp and his society, in consideration of the covenants and promises of the subscribers, do—

> "adopt the subscribers as members of the community, *whereby* each of them obtains the privilege to be present at each religious meeting; not only they themselves, but also their children and families, shall and will receive the same necessary instructions in church and school which is needful and requisite for their temporal good and welfare, as well as eternal felicity."

Here is a statement of the effect and consequences of an adoption, and what rights the adopted thereby acquires are specifically stated.

So far the adoption as members insures them and their families attendance at religious meetings, and necessary instructions in church and school, which is needful for their temporal good and eternal felicity, but nothing else.

Then follows:

Article II:

> "George Rapp and his associates (society) promise to supply the subscribers jointly and severally with all the necessaries of life, as lodging, meat, drink and clothing, etc., and not only during their healthful days, but also when one or more of them become sick or otherwise unfit for labor, they shall have and enjoy the same support and maintenance as before; and if, after a short or long period, the father or mother of a family should die, or otherwise departed from the community and leave a family behind, they shall not be left widows or orphans, but partake of the same rights and maintenance, as long as they live or remain in the community as well in sick as healthful days, the same as before, or as circumstances or necessities may require."

These promises are:

To supply the subscribers with all the *necessaries of life*, as lodging, meat, drink, clothing, etc.

These shall be furnished not only during healthful days, but when one or more is sick or unable to work they shall have the same support and maintenance as if well.

If the father or mother of a family,

> "should die, or be otherwise departed from the community,"

and leave a family behind, they shall not be as widow or orphans,

> "but shall receive and partake of the same rights and maintenance *as long as they live and remain in* the community, as well in sick as healthful days, the same as they had before or as circumstances or necessity may require."

This assures support to the family so long as they remain in the community.

All these promises are either to the subscribers personally, or to their families, and are all personal and relate to their spiritual and material welfare while they remain members of the Harmony Society. No one of them extends *beyond* the actual membership in the Harmony Society. It is only while a member the promises are binding. Death, or departure from the society, terminates the liability of the promissor. Indeed, the promises are such that they could only be carried out during the continuance of the relation.

Only during such continuance could they attend religious meetings, and receive the necessary instructions in church and school, and be furnished with lodging, meat and drink.

Then comes *Article III*, which is in these words:

"And if the case should happen as stated above, that one or more of the subscribers, after a short or a long period, should break their promise and could or would not submit to the laws and regulations of the church or community, and for that or any other cause would leave Harmony, George Rapp and his associates *promise to refund him or them*, the value of his or their property brought in without interest, in one, two or three annual installments, as the sum may be, large or small; and if one or more of them were poor and brought nothing in the community, they shall, provided they depart openly and orderly, receive a donation in money, according to his or their conduct while a member, or as he or their circumstances and necessities may require, which George Rapp and his associates shall determine at his or their departure."

This did not qualify the unqualified gift, under section 1, into a base fee, or limited trust. It did not impress with a trust the free gift or donation. It was merely a covenant to return without *interest* the value of the thing given—not its value increased with (70) years' work of others. The value of the property brought in only.

It is to cover the case of a withdrawal from the society and does not include death in the society.

This withdrawal, as also see preceding Section III., is recognized as a breach of contract by the one so withdrawing, for it says:

"should break their promise and could or would not submit to the laws and regulations of the church or community, and for that or any other cause would leave,"

then, and in that event,

"George Rapp and his society promise"

to do what?

(*a*) To refund him or them the value of his or their property brought in, without interest, in one, two or three annual installments, as the sums may be, large or small.

(*b*) And if the departing brought nothing into the society, yet, if they depart openly and orderly he shall receive a donation in cash money, according to their conduct, or as circumstances and necessities may require, which George Rupp and his society shall determine at his departure.

This applies only to such as withdraw. It does not include the estates of those who died.

The promise is to refund, without interest, the value of the property put in, payable in installments.

If no property was put in, then, if they have behaved, and depart openly, each will receive a

"*donation in money * * which George Rapp and his society shall determine* at his or their departure."

It seems obvious—

(*a*) That the present bill in equity is not brought for a breach of this contract. There is no averment in the bill that on the withdrawal the society refused to perform its part of this contract.

(*b*) There is no evidence that any one of the withdrawing members, under whom the plaintiffs claim, ever contributed any money or property to the society.

(*c*) There is no averment that any one of the withdrawing members ever demanded a return of any property alleged to have been contributed.

(*d*) If it was such a case, the last withdrawal was over fifty years ago, and would be ruled out under the Henrici and Speidel case—cited *supra*.

On the contrary, the plain theory of this bill is that so long as the society was in existence, carrying out its purposes, no one of the plaintiffs had any enforceable claim whatever.

The claim they now set up arises solely and only because they say the society is *dissolved*, either by common consent or by reason of abandonment of its principles, and such dissolution happened after Duss became a member, in 1890. The trust denounced in paragraph 26 as ended is only ended because the society has been dissolved.

It would seem certain that under this agreement of 1805 death, or withdrawal from the society during life, terminated the connection, except as to a family left in the society, and all the rigbts of each in any way to any of the property of the society. If it did not, if the withdrawing member still had his interest in the common property of the society, why was anything paid to him?

If he only conveyed a base fee—if he had a reversionary interest—why pay him the value of his contribution?

Only as a member did any one directly, or indirectly, have any rights, of, in, to, or out of the society property. These rights, even as a member, were limited to the precise things shown in the agreement analyzed, and they were, attendance at religious services, schooling and maintenance, embodying lodging, food, clothes, etc.

No one could withdraw and, after his withdrawal, claim to participate in the worship, or have the food, lodging, etc.

The withdrawal was contrary to his covenant to labor for the society, and to show due and ready obedience to the superintendents and laws.

By his withdrawal he violated these.

Refusing to perform his covenants, he could not insist on performance by George Rapp and his associates of their covenants.

Being no longer a member of the Harmony Society, he could not have any so-called rights of property, or other rights, which, as a member, and solely because he was a member, he might insist on.

Withdrawal, or death, under the agreement, terminated all rights any member of the society had to any of its property, or to participate in any of its rights, or to receive support and maintenance from it.

If a family was left behind, then, as long as they lived, and remained in the community, they should be supported.

But this was the sole extent of the rights, even of the immediate family, and these rights continued only

> "as long as they live and remain in the community."

This agreement introduces no question of faith, or of peculiar religious belief. The society is not founded for the furtherance of any kind of religious belief or conduct. The contract is simply and solely a civil one, regulating the rights of the members. It contains nothing except the contractual relations between the individuals, and, also, between the indi-

viduals and George Rapp and his society. Its evident purpose would have been destroyed if members could have partition, or sell their rights, or impart them to strangers, or if these rights descended to heirs, for in a few years outsiders would be in control. The society was supreme. The individual was nothing, except as a part of the society.

AGREEMENT OF 1821, AT POSEY COUNTY, INDIANA.

Next comes the second agreement:

> "Be it hereby known that to-day, (20th January, 1821), in the year of our Lord one thousand eight hundred and twenty-one, the present agreement, treaty and alliance was made and concluded between us, the following persons, to wit: N. N., etc., of the one part, and George Rapp and his associates of the other part.
>
> "After the aforesaid persons became sufficiently acquainted with the principles, rules and regulations of the community of George Rapp and his association, by virtue of their religious principles, they have, after long and mature reflection, out of their own free will, determined to join the community of George Rapp and his association, in Harmony, Posey county, State of Indiana; to that purpose the aforesaid persons bind themselves and promise solemnly by these presents, to comply with the ordinances, rules and regulations of the community, and render due obedience to the superintendents ordained by the community, and to perform as much as possible all occupations and labors to which they are ordered, and help to promote the benefit, happiness and prosperity of the community. And if the case

should happen that the aforesaid persons, jointly or singly, after a short or long period of time, leave the community for any cause whatever, they hereby bind themselves, jointly and each for himself separately, never in no case to bring any account, nor make any claim, either against the association or any individual member thereof, for their labor and services rendered; also, never to make any demand, ask or claim any other payment, under any name and description whatsoever, but will do and have done all things out of Christian love, for the good and benefit of the community, or else take it as a gift, if George Rapp and his association willingly give them something.

"However, George Rapp and his association, in return adopt the aforesaid persons into their community, whereby they obtain prerogative to partake of all meetings for divine services by which they receive in church and school the necessary instructions, requisite and needful for their temporal benefit, and happiness, and eternal felicity. George Rapp and his association bind themselves further to supply the aforesaid persons with all the wants and necessaries of life, to wit: meat, drink and clothing, etc., and indeed not only during their healthful days, but also if all or any of them get sick or otherwise infirm and unable to work they shall, as long as they remain members of the community, receive and enjoy the same support as before, during their better days, or as their circumstances may require.

"In confirmation of the presents we, both parties, have hereunto set our hands and seals. Done in Harmony, the day and year above stated."

ANALYSIS OF THE AGREEMENT OF 1821.

It differs from that of 1805 in that it is for new members of a society already formed and having for its government adopted rules and regulations. It, therefore, does not go into detail as did the agreement of 1805, but it did in substance contain the essential portions of that article.

(1) The members joining,

> "bind themselves and promise solemnly by these presents to comply with the ordinances, rules and regulations of the community and render due obedience to the superintendents ordained by the community, and to perform as much as possible all occupations and labor to which they are ordered, and help to promote the benefit, happiness and prosperity of the community.

(2) If any one jointly, or singly,

> "leave the community for any cause whatever, they hereby bind themselves, jointly, and each for himself separately, never and in no case to bring any account nor make any claim either against the association or any individual member thereof for their labor and services rendered; also never to make any demand, ask or claim any other payment under any name and description whatsoever, but will do and have done all things out of Christian love for the good and benefit of the community, or else take it as a gift, if George Rapp and his association willingly give them something."

(3) George Rapp and his association

> "in return adopt the aforesaid persons into their community, whereby they obtain prerogative to partake of all meetings for divine services by which they receive in church and school the necessary in-

structions requisite and needful for their temporal benefit and happiness and eternal felicity."

(4) Rapp and his association also agree to supply them meat, drink and clothes, both during days of health and also of sickness,

> "they shall *as long as they remain members of the community* receive and enjoy the same support as before during their better days, or as their circumstances may require."

This agreement contains no provision whatever for the return of the value of any property contributed. It emphasizes especially two things:

(*a*)—The free and unconditional gift of property and labor to the association.

(*b*)—The absolute and unqualified renunciation of each and all of such property and labor. In its own words:

> " * * * *Never and in no case* to bring any account *nor make any claim* either against the association or any individual member thereof for their labor and services rendered ; also *never to make any demand, ask or claim any other payment under any name and description whatsoever.*"

AGREEMENT OF 1827, AT ECONOMY, BEAVER COUNTY, PENNSYLVANIA.

The third agreement is as follows:

"WHEREAS, By the favor of Divine Providence, an association or community has been formed by George Rapp and many others, upon the basis of Christian fellowship, the principles of which, being faithfully derived from the sacred scriptures, include the government of the patriarchal age, united to the community of property adopted in the days of the apostles, and wherein the single object sought is to approximate, so far as human imperfection may allow, to the fulfillment of the will of God, by the exercise of those affections, and the practice of those virtues, which are essential to the happiness of man in time and throughout eternity;

"AND, WHEREAS, It is necessary to the good order and well-being of said association that the condition of membership should be clearly understood, and that the rights and privileges and duties of every individual therein should be so defined as to prevent mistake or disappointment on the one hand and contention or disagreement on the other;

"THEREFORE, Be it known to all whom it may concern: That we, the undersigned, citizens of Beaver county, in the Commonwealth of Pennsylvania, do severally and distinctly, each for himself, covenant, grant, and agree to, and with the said George Rapp and his associates, as follows, to wit:

"ARTICLE 1. We, the undersigned, for ourselves, our heirs, executors and administrators, do hereby give, grant, and forever convey, to the said George Rapp and his associates, and their heirs and assigns, all our property, real, personal and mixed, whether it be lands and tenements, goods and chattels, money or debts due to us, jointly or severally, in possession, or in remainder, or in revision, or in expectancy, whatsoever or wheresoever, without evasion, or qualification, or reserve, as a free gift or donation, for the benefit and use of the said association or community; and we do hereby bind our-

selves, our heirs, executors and administrators, to all such other acts as may be necessary to vest a perfect title to the same in the said association, and to place the said property at the full disposal of the superintendents of the said community without delay.

"ARTICLE 2. We do further covenant and agree to and with the said George Rapp, and his associates, that we will severally submit faithfully to the laws and regulations of the said community, and will at all times manifest a cheerful and ready obedience toward those who are or may be appointed as superintendents thereof, holding ourselves bound to promote the interests and welfare of the said community, not only by the labor of our own hands, but also by that of our children, or families and others who now are or hereafter may be under our control.

"ARTICLE 3. If, contrary to our expectations, it should so happen that we could not render the faithful obedience aforesaid, and should be induced, from that or any other cause, to withdraw from the said association, then and in such case, we do expressly covenant and agree to and with the said George Rapp, and his associates, that we will never claim or demand, either for ourselves, our children, or for any one belonging to us, directly or indirectly, any compensation, wages or reward whatever, for our or their labor or services rendered to the said community, or to any member thereof; but whatever we or our families jointly or severally shall or may do, all shall be held and considered as a voluntary service for our brethren.

"ARTICLE 4. In consideration of the premises, the said George Rapp, and his associates, do by these presents, adopt the undersigned, jointly and severally, as members of the said community, whereby each of them obtains the privilege of being present at every religious meeting, and of receiving, not only for themselves, but also for their children and families, all such instructions in church and school as may be reasonably required, both for their temporal good and for their eternal felicity.

"ARTICLE 5. The said George Rapp, and his associates, further agree to supply the undersigned severally with all the necessaries of life, as clothing, meat, drink, lodging, &c., for themselves and their

families; and this provision is not only limited to their days of health and strength, but when any of them shall become sick, infirm, or otherwise unfit for labor, together with such medicine, care and attendance and consolation as their situation may reasonably demand. And if at any time after they have become members of the association, the father or mother of a family should die or be otherwise separated from the community, and shall leave their family behind, such family shall not be left orphans or destitute, but shall partake of the same rights or maintenance as before, so long as they remain in the association, as well in sickness as in health, and to such extent as their circumstances may require.

"ARTICLE 6. And if it should happen as above mentioned, that any of the undersigned should violate his or her agreement, and would or could not submit to the laws and regulations of the church or community, and for that or any other reason, should withdraw from the association, then the said George Rapp, and his associates, agree to refund to him or them the value of all such property, without interest, as he or they may have brought into the community in compliance with the first article of this agreement, and the said value to be refunded in one, two or three annual installments, as the said George Rapp and his associates shall determine. And if the person or persons so withdrawing themselves were poor, and brought nothing into the community, yet if they depart openly and regularly, they shall receive a donation in money, according to the length of their stay, and to their conduct, and to such an amount as their necessities may require, in the judgment of the superintendents of the association.

"In witness whereof and in testimony that the undersigned have become members of the said community upon the conditions aforesaid they have hereunto severally, and each for himself, set their hands and seals on the ninth day of March in the year of our Lord one thousand eight hundred and twenty-seven."

ANALYSIS OF THE AGREEMENT OF 1827.

The agreement of March 9th, 1827, is substantially the same as that of 1805 except in its preface or recital as to what the community is and what its purposes are.

That recital asserts that

> "by the favor of Divine Providence, an association or community has been formed by George Rapp and many others."

That such a community is

> "upon the basis of Christian fellowship."

That "the principles" of such fellowship have been "faithfully derived from the sacred scriptures,"

and such principles

> (*a*) Include the government of the patriarchal age,
>
> (*b*) United to the community of property adopted in the days of the apostles,
>
> (*c*) Wherein the single object sought is to approximate, so far as human imperfections may allow, to the fulfillment of the will of God by
>
> (1) the exercise of those affections, and
>
> (2) the practice of those virtues,
>
> (3) which are essential to the happiness of man in time and throughout eternity.

This analysis would seem to show that "Christian fellowship" is that upon which the society is founded.

That the principles of such fellowship are derived from the sacred scriptures, and are,

(1) Government of the patriarchal age;

(3) Community of property as in the days of the apostles:

The single object of the society is

"to approximate * * to the fulfillment of the will of God."

The mode in which this is to be done is,

(1) By the exercise of those affections, and

(2) The practice of those virtues,

(3) Which are essential to the happiness of man in time and throughout eternity.

The definite and particular things which this preface designates are Christian fellowship and the government of the patriarchal age, as it is found in the Scriptures, and community of property, as in the apostles' days.

The object sought is the fulfillment of the will of God by the exercise of the virtues and affections which are essential to happiness here and hereafter.

What is community of goods?

An economic system which obliterates private property.—Webster. Nolsey on *Communism.*

The society or State is supreme; the individual, the child supported by it. What the exact rules of communism which the apostles had, and how far they absolutely extinguished individual ownership, is not known, and hence, the agreement does not leave the rights and privileges and duties of members to be extracted from this general language.

It goes on to state that for the

> "good order and well being of said association"

it is necessary that

> "the condition of membership should be *clearly* understood, and that the *rights*, and *privileges*, and *duties* of *every* individual therein should be so *defined* as to prevent mistake or disappointment on the one hand and contention and disagreement on the other."

Therefore, all of the individuals

> "do severally and distinctly, each for himself, covenant, grant and agree to, and with the said George Rapp and his associates as follows:"

In substance the "as follows" is the agreement of 1805, stated in more precise language.

The "as follows" comprises six (6) articles, which may be skimmed thus:

Article I:

We, for ourselves, heirs, executors and administrators, do hereby

> "give, grant and forever convey to the said George Rapp and his associates, and their heirs and assigns, all our property, real, personal and mixed, * * *

> *as a free gift or donation for the benefit and use of the said association or community.*"

Did these members suppose they were only conveying a part of their title, and holding back a part?

Each one when he signed affirmed community of goods, which, in itself, was a parting with private ownership.

The covenants are express and implied, both as to negation of private ownership, with a covenant for further assurance, if necessary,

> "to vest a perfect title to the same in the said association, and to place the said property at the *full disposal* of the superintendents."

Article II:

Covenants to faithfully submit to the laws and regulations of the community, to obey the superintendents, to promote the interests and welfare of the community

> "not only by the labor of our own hands, but also by that of our children or families, and others who now are or hereafter may be under our control."

Article III:

If we could not render faithful obedience, or for any cause withdraw from the society, in that case

> "we do *expressly* covenant and agree to and with the said George Rapp and his associates, that we *will never claim or demand*, either for ourselves, our children, or for any one belonging to us, *directly* or *indirectly*, any *compensation*, *wages* or *reward* whatever, for our or their labor or services rendered to the said community, or to any member thereof; but whatever we or our families, jointly or severally, shall or may do, all *shall be held and considered as a voluntary service for our brethren.*"

Article IV:

In consideration of these preceding covenants, George Rapp and his society

> "adopt the undersigned, jointly and severally, as members of the said community, *whereby* each of them obtains,

(1) The privilege of attending every religious meeting, and,

(2) Receiving instruction in church and school for themselves and families,

> "as may be reasonably required both for their temporal good and for their eternal felicity."

Article V:

Rapp and his associates

> "further agree to supply the undersigned severally with all the necessaries of life, as clothing, meat, drink, lodging, etc., for themselves and their families."

This is to cover their days of sickness. And, in addition, they shall have

> "such medicine, care and attendance and consolation as their situation may reasonably demand."

If a member, who is father or mother, die,

> "or be otherwise separated from the community, and leave their family behind, such family shall not be left orphans or destitute, but shall partake of the same rights or maintenance as before, *so long as they remain in the association.*"

Article VI:

If any member for any reason withdraws from the association

> "then the said George Rapp and his associates agree to refund him or them *the value* of all such property, without interest, as he or they may have brought into the community, in compliance with the first article of this agreement, and the said value to be refunded in one, two or three annual installments, as the said George Rapp and his associates shall determine."

If the party brought nothing in, yet, if he departs openly, he shall

> "receive a donation in money, according to the length of their stay, and to their conduct, and to such an amount as their necessities may require in the judgment of the superintendent of the association."

So far as the rights of the individual are concerned, this agreement of 1827 left them where that of 1805 did. No one had any individual specific right in, or claim to, any of the property of the Harmony Society. The sole right the individual had was as a member of the community, and that was a common joint right, several only in what the covenants of the agreement gave him. These were, attending religious meetings, instruction in church and school, clothing, food, etc., and general support. If he withdrew, and his family remained behind, so long as they remained they were to be supported. On withdrawing, the value, without interest, of the property contributed was to be repaid. If no property had been contributed, a donation in money to be fixed by the superintendent was to be given.

But the rights of the individual were all personal. They ended with his or her death or withdrawal. He never did

have any right to any of the property of the society, except as he was part of the society, and when he died or withdrew neither his heirs nor personal representatives had any right or claim to the same. It, in some sense, resembles a member of a church or village, who, so long as a member, enjoys the property of the church or village, but a soon as he leaves or dies this right, which was personal, ceases. Unlike a village, the number of whose inhabitants is uncertain, this society was fixed and definite in its membership, all evidenced by the written agreements signed by the members.

The property he brought into the society, and the work he did while in it, were the consideration for his support, maintenance, etc. They were declared to be a free gift by him to the society. Had it not been for Article VI he could not have claimed a return of the value, but that value was limited to cases where one withdrew, (not when he died in the society). Then, it was the value without interest. It was not the *identical thing* contributed, but the value, without interest, and such value was to be repaid in one, two and three years.

If one withdrew and demanded the return value, and the society refused to pay it, probably an action would lie; but it would be a personal action, and on his death, if it survived, would go to his personal representatives, *i. e.*, executors or administrators.

In no case had the individual member aught that descended to his heirs at law.

The withdrawal, or death, absolutely and finally severed the tie which bound the individual to the society, and terminated his right to demand the fulfillment of any covenants, or intermeddling in any way with any of the property of the

society. No matter what was done by the society after his death or withdrawal—no matter what disposition it made of the property of the society—no injury was done to the departed member. He was not wronged. He no longer was interested therein, and he could no more interfere than a perfect stranger.

The preface did put the society on the basis of Christian fellowship, and it fixed, as its guiding principles, the government of the Patriarchal Age and the community of goods.

I suppose that this government of the Patriarchal Age meant some one as the head of the family or tribe, which family or tribe would include the children, grandchildren and collaterals, but it seems hardly necessary to trace it out now, owing to the change made after Rapp's death by the Article of 1847.

See 3 *Wallace, Jr.*, 70.

The communism was specifically stated to be

> "the community of property adopted in the days of the apostles."

What was that?

The only references to it in the Holy Scriptures are in the Acts of the Apostles.

During the Pentecostal glory, when the apostles did many signs and wonders, fear came upon every soul, and in Acts, chapter 2, verses 44 and 45, it is recorded :

> "And all that believed were together and had all things common; and sold their possessions and goods, and parted them to all men, as every man had need."

In Chapter 4, after telling of the signs and wonders the apostles John and Peter did, it is said (verses 33, 34, 35) :

> " * * and great grace was upon them all. Neither was there any among them that lacked; for as many as were possessors of lands or houses sold them and brought the prices of those things that were sold, and laid them down at the apostles' feet, and distribution was made unto every man according as they had need."

Barnabas sold his land and gave in the money, but Ananias and Sapphira were stricken with death for keeping back part of the price they sold a "possession" for.

The community of goods the Harmony Society founded was more general and broader, but it was but a part of the agreement of 1827, which provided in the most specific manner to detach any individual right or claim of any one individual to the common property, and it emphasized what was already really implied, in the contract, that it depressed the individual and elevated the community.

But the broad phrase "community of goods" was, so far as the individual member was concerned, defined, and the rights of each was set on in plain unambiguous words, so that

> "the condition of membership should be clearly understood, and that the rights and privileges and duties of every individual therein should be so defined as to prevent mistake or disappointment on the one hand and contention and disagreement on the other."

The community was everything. The individual nothing, except as he was protected by express covenants.

The single object of the community was (what, theoretically, all governments are for), that each should within its sphere approximate, as far as human imperfections will allow,

> "to the fulfillment of the will of God,"

by the

> "exercise of those affections, and the practice of those virtues, which are essential to the happiness of man in time and throughout eternity."

To fulfill the will of God is every one's duty—indeed, in one sense, every one's destiny.

The affections and virtues, by the exercise of which the Harmony members were to effect this, are not enumerated.

Every state or society, large or small, in a Christian land, seeks in some way to fulfill a part of the will of God, and to do it in some appropriate, and by some efficient manner, and this agreement of 1827 in this respect differed from no other government or society, except that it specifically stated its *single object*, and prefaced it by agreeing that the best mode of accomplishing this result was government of the patriarchal age and community of goods.

AGREEMENT OF 1836, AT ECONOMY, BEAVER COUNTY, PENNSYLVANIA.

> "WHEREAS, The Harmony Society, consisting of George Rapp and many others, now established in the town of Economy, in Beaver county, Pennsylvania, did, on the 9th of March, 1827, enter into certain articles of association, of which the 6th in number is as follows, viz.:
>
> "And if it would so happen, as above mentioned, that any of the undersigned should violate his or

their agreement, and would, or could not, submit to the laws and regulations of the church or community, and for that or any other cause should withdraw from the association, then the said George Rapp and his associates agree to refund to him or them the value of all such property as he or they may have brought into the community, in compliance with the first article of this agreement, the said value to be refunded without interest, in one, two or three annual installments, as the said George Rapp and his associates shall determine.

"And if any person or persons so withdrawing themselves were poor, and brought nothing into the community, yet if they depart openly and regularly, they shall receive a donation in money, according to the length of their stay and to their conduct, and to such amount as their necessities may require, in the judgment of the superintendents of the association.

"AND, WHEREAS, The provisions of the said 6th article, though assented to at the time, manifestly depart from the great principle of a community of goods and may tend to foster and perpetuate a feeling of inequality at variance with the true spirit and objects of the association;

"AND, WHEREAS, The principle of restoration of property, besides its pernicious tendency, is one which cannot now be enforced with uniformity and fairness, inasmuch as the members of the association, in the year 1818, under a solemn conviction of the truth of what is above recited, did destroy all record and memorial of the respective contributions up to that time;

"AND, WHEREAS, Continued happiness and prosperity of the association, a more intimate knowledge of each other, have removed from the minds of all members the least apprehension of injustice and bad faith;

"NOW, THEREFORE, Be it known by these presents, that the undersigned, with a view to carry out fully the great principles of our union, and in consideration of the benefits to be derived therefrom, do hereby solemnly enter into covenants, and agree with each other, as follows:

"1st. The said 6th article is entirely annulled and made void, as if it had never existed; all others remain in full force as heretofore.

"2d. All the property of the society, real, personal and mixed, in law or equity, and howsoever contributed or acquired, shall be deemed, now and forever, joint and indivisable stock. Each individual is to be considered to have finally and irrevocably parted with all his former contributions, whether in land, goods, money or labor; and the same rule shall apply to all future contributions, whatever they may be.

"3d. Should any individual withdraw from the society, or depart this life, neither he, in the one case nor his representatives in the other, shall be entitled to demand an account of said contributions, whether in land, goods, money or labor, or to claim anything from the society as matter of right. But it shall be left altogether to the discretion of the superintendent, to decide whether any, and if any, what allowance shall be made to such member, or his representatives as a donation.

"Invoking the blessing of God on this sacrifice of all narrow and selfish feelings to the true purposes of the association and to the advancement of our own permanent prosperity and happiness, we have signed the foregoing instrument, and affixed thereunto our respective seals, at Economy, this 31st day of October, 1836.

"Signed and sealed in the presence of

"CHARLES D. VOLTZ,

"WILLIAM P. BAUM.

(Signed by 391 members.)

(Signed by plaintiff and others.)"

ANALYSIS OF THE AGREEMENT OF 1836.

The agreement of 1836 follows that of 1827. It repeals Article VI. of the agreement of 1827, and makes more emphatic—but I do not think any more certain—the proposition that the individual had no separate and specific property or rights in property of the society, but his rights were in common with all, and in their nature joint. His death or withdrawal cut him off from the society and all its property. It differs especially from all prior agreements in taking away the right of a return of value.

After reciting *in extenso* Article VI. of the agreement of 1827, it provided as follows:

> "*And whereas*, The provisions of the said 6th article, though assented to at the time, manifestly *depart* from the great principles of a *community of goods*, and may tend to foster and perpetuate a feeling of inequality at variance with the true spirit and objects of the association;
>
> "*And whereas*, The principle of restoration of property, besides its pernicious tendency, is one which cannot now be enforced with uniformity and fairness, inasmuch as the members of the association, in the year 1818, under a solemn conviction of the truth of what is above recited, did destroy all record and memorial of the respective contributions up to that time;
>
> "*And whereas*, Continued happiness and prosperity of the association, a more intimate knowledge of each other, have removed from the minds of all members the least apprehension of injustice and bad faith;

"*Now, therefore*, Be it known by these presents that the undersigned, with a view to *carry out fully the great principles of our union*, and in consideration of the benefits to be derived therefrom, do hereby solemnly enter into covenants, and agree with each other, as follows:

"1st. The said Sixth Article is entirely annulled and made void, as if it had never existed; all others remain in full force as heretofore."

Then came

Article 2d:

"All the property of the society, real, personal and mixed, in law or equity, and howsoever contributed or acquired, shall be deemed now and forever *joint and indivisible stock*. Each individual is to be considered to *have finally and irrevocably parted* with all his former contributions, whether in lands, goods, money or labor, and the same rule shall apply to all future contributions, whatever they may be."

To me, this does not add to what was contained in the agreement of 1827, except that it is stated in more specific words.

All the property of the society is declared to be

"joint and indivisible stock."

But this is what it was under the contracts of 1805, 1827. Community of goods necessarily implied it.

It, therefore, assumed a joint tenancy, which included the right of survivorship, and therefore forbade the idea of a division without unanimous consent.

See Kennedy's Appeal, 60 *Pa. St.*, 511.

The individual

"*finally* and *irrevocably* parted with all his * * contributions,

past or future or present.

He no longer had any right of property in any of the property he had handed in.

Then came

Article 3d:

> "Should any individual withdraw from the society or *depart this life, neither he, in the one case, nor his representatives in the other, shall be entitled to demand an account* of said contributions, whether in land, goods, money or labor, *or to claim anything* from the society as matter of right. But it shall be left altogether to the discretion of the superintedent to decide whether any, and if any, what, allowance shall be made to such member or his representatives as a donation."

What about a base fee, reversionary rights, limited trusts? Read Articles 2 and 3. Did they suppose when they said *finally and irrevocably parted* they did not mean it? But only meant they granted a limited estate? Turn back to Agreement of 1827.

Here, again, the idea involved in the Agreement of 1827 is more explicitly and plainly stated, but to my vision it is clearer than it was in the agreement of 1805 and 1827, only, because the language is bolder and more pronounced.

Each individual's connection with the society was personal. Membership was the life of the connection. Its dissolution by death or departure from the society ended the membership. This ended the personal connection, and hence, ended all the claims and rights in and to the society and any of its property.

This was in the Agreement of 1805 and 1827, and the Agreement of 1836 only stated it in more glaring words.

It reiterated, that, in case of death or withdrawal, there shall be no right on the part of any one

> "to demand an account of said contributions, whether in land, goods, money or labor,"

and then it added,

> "or to claim anything from the society as matter of right."

He was wholly cut off, and to the superintendent was left the decision of the question,

> "whether any, and if any what allowance shall be made to such member or his representatives as a donation."

AGREEMENT OF 1847, AT ECONOMY, BEAVER COUNTY, PENNSYLVANIA.

George Rapp's death, on August 7th, 1847, led to the preparation and execution of the new agreement, dated August 12th, 1847, which is as follows:

> "WHEREAS, By the decree of God, the venerable Patriarch and much-loved founder and leader of the Harmony Society, George Rapp, has departed this life, whereby its members are deprived of his Christian fellowship and religious ministry, and of his superintendence in their temporal affairs; and whereas, in consequence of this deeply afflicting dispensation it has become necessary, to the good order and well-being of the association, that some plan should be agreed upon to regulate its future affairs, promote its general welfare and preserve and maintain it upon its original basis;
>
> "THEREFORE, Be it known to all whom it may concern, that we, the undersigned, surviving and remaining members of the Harmony Society, and constituting the same, do severally and distinctly, each for himself, covenant, grant and agree to and with all the others thereof, and with those who shall hereafter become members, as follows: That is to say:
>
> "ARTICLE 1ST. We do hereby solemnly recognize, re-establish and continue the articles of our association (the sixth section excepted) entered into at Economy on the 9th day of March, A. D., 1827, in the presence of John H. Hopkins and Charles L. Voltz, and the supplement thereto, adopted at the same place on the 31st day of October, A. D., 1836, in the presence of Charles L. Voltz and William F. Baum, except so far as the same are affected by the death of the said George Rapp, or hereinafter altered or modified, and to this extent we declare the said articles to remain in full force.
>
> "ARTICLE 2ND. We hereby ordain and establish a Board of Elders, which shall consist of nine mem-

bers of the Harmony Society and their successors, to be chosen as hereinafter provided: John Stahl, John Schuabel, Adam Nachtrieb, Matthew Scholle, Joseph Hoerule, John Eberle, Romelius L. Baker, Jacob Henrici, Johnathan Lentz shall be the first board.

"ARTICLE 3RD. The Board of Elders shall have and exercise the following powers, to wit: 1st. To regulate and manage exclusively the internal temporal concerns of the Harmony Society; to appoint and remove superintendents in the several departments of industry; to make regulations and give orders in relation to their business operations, and generally to take care that the members perform the duties assigned to them. 2nd. To determine all disputes and misunderstandings amongst the members of the society; to advise if necessary, reprove any member who may be in fault or found delinquent in his duty. 3rd. To admit new members into the society and to expel them therefrom. New members when admitted shall subscribe this agreement as the evidence of their membership, and of the rights acquired by, and the duties imposed upon them. 4th. To establish regulations for the maintenance and improvement of the morals of the society and for the instruction of its members. 5th. To appoint one or more of its members spiritual leaders and instructors with such authority in relation to church discipline as shall be conferred by the board. 6th. To remove from the Board of Elders and to declare his seat vacated, also to remove from office either or both of the trustees hereinafter appointed for the management of the external affairs and their successors in office. 7th. To fill all vacancies in the Board of Elders occasioned by the death, resignation or removal from office of any of its members and their successors, and so often as a vacancy shall occur, to fill all vacancies in the office of trustee, when either or both of the trustees or their successors shall die, resign his office, or be removed from the same, and so often as a vacancy shall occur. 8th. The concurrence of six members of the Board of Elders shall be deemed the act of the board and a legal exercise of any of the powers hereinbefore conferred on the said board. 9th. A record book shall be kept in which the Board of Elders shall enter all proceedings they

shall consider of sufficient importance to be preserved. In all controversies, judicial or otherwise, in which the society or any of its members may be a party, such record shall be full and absolute evidence of the facts and proceedings therein contained and the affirmation of any elder shall be competent evidence of the identity of the said record.

"ARTICLE 4th. We do further ordain and establish a Board of Trustees for the exclusive management of the external business and affairs of the society, which board shall consist of two persons, who shall be members of the Board of Elders, and their successors who shall be appointed as hereinbefore provided. Romelius L. Baker and Jacob Henrici shall be the first Board of Trustees.

"ARTICLE 5th. The said trustees shall jointly and severally have and exercise the powers following, to wit: 1st. In their own names or that of either of them, or otherwise, to purchase and sell, deal, barter, exchange and traffic, make all contracts and bargains in the prosecution of the business, to invest the funds in stocks and other securities, and make transfers and assignments, to collect debts, receive and pay out moneys, settle claims, compromise disputes, institute legal proceedings, appoint and dismiss agents, clerks and attorneys in fact, and at law, and generally to transact all the external business affairs of the society. 2d. To make donations to seceding and excluded members and to the representatives of those who are deceased, and for such benevolent and charitable purposes as they may deem prudent and fit. 3d. The said trustees shall have power jointly to purchase real estate in their own names and also in their joint names to grant, bargain, sell and convey all or any of the lands and tenements now or hereafter owned by or belonging to the said society, and for this purpose to execute deeds of conveyance in fee simple or otherwise in their joint names, but the proceeds of all such sales shall be held in trust for the society. 4th. For the purpose of providing effectual and convenient remedy in law for all injuries to the property of the said society, real and personal, by trespass, ouster, detention, conversion or otherwise. The said trustees are hereby invested with the rights of possession, entry and action in

their own names, as fully and to all intents and purposes as do and may exist in the said society, and to effectuate this object more completely, and in consideration thereof, we grant and transfer to the said trustees all such title and interests in the said property as shall be necessary therefor. The proceeds of all suits to be brought shall be in trust for the society. 5th. The powers hereby vested in the said trustees shall extend to and embrace all the property of said society, real, personal or mixed, whether standing or held in the name of the late Frederick Rapp, the said George Rapp, or in any other name or form whatsoever.

"ARTICLE 6TH. It is hereby distinctly and absolutely declared and provided that all the property, real, personal and mixed, which now or hereafter shall be held or acquired by any trustee or trustees or person under them, is and shall be deemed the common property of said society, and each trustee, now or hereafter appointed, hereby disclaims all personal interest in the present resources and future earnings of the society, other than that of a member thereof, according to the articles of association hereby re-established and continued, and according to the present agreement.

"IN WITNESS WHEREOF, We, the undersigned, members of the Harmony Society, who constitute the said association, have to these articles, executed in English and in German, hereunto set our hands and seals, at Economy, in Beaver county, this 12th day of August, A. D. 1847.

"Read over to and signed and sealed by the several persons whose names are subscribed in the presence of us.

"Signed by W. P. Baum and others.

"Duly acknowledged. Recorded in Beaver county, Pa., Deed Book 25, page 121," etc.

ANALYSIS OF THE AGREEMENT OF 1847.

It recited Rapp's death, and averred it was necessary,

> "that some plan should be agreed upon to regulate its future affairs, promote its general welfare, and preserve and maintain it upon its original basis."

Therefore,

> "* * * the surviving and remaining members of the Harmony Society, *and constituting the same*,"

do severally

> "covenant, grant and agree to and with all the others thereof,"

as follows:

Article 1st:

> "Recognize, re-establish and continue,"

the Articles of 1827, save Article VI, and that of 1836,

> "*except* so far as the same are affected by the death of the said George Rapp, or hereinafter altered or modified, and to this extent we declare the said articles to remain in full force."

Article 2nd:

> "We hereby ordain and establish a board of elders, which shall consist of nine members of the Harmony Society, and their successors to be chosen as hereinafter provided."

It will be noticed that the one qualification for an elder was that he or she should be a member of the Harmony Society. The sex of the elder was not inquired into, and there is nothing in the agreement of 1847 to prohibit a woman from filling the office.

Article 3rd:

> "The board of elders shall have and exercise the following powers, to-wit:
>
> "1st. To regulate and manage *exclusively* the *internal*, temporal concerns of the Harmony Society; to appoint and remove superintendents in the several departments of industry; to make regulations and give orders in relation to their business operations, and generally to take care that the members perform the duties assigned to them."

Here is given to the board

> "the exclusive management of the internal, temporal concerns of the society."

Not of a portion, but of all of them. And the power is given to manage *exclusively*, not in conjunction with others, nor as others shall think best, but the power is absolutely lodged in the elders.

Then, they also have the power to appoint and remove superintendents in the several departments of industry, to make regulations and give orders as to the business operations of each, and generally to see that the members do what they are ordered to do.

It will be noticed that discretion was left with the elders as to whom they would appoint superintendents. They are not required to appoint members of the society, but are left in that respect to the exercise of their own judgment.

> "2d. To determine all disputes and misunderstandings amongst the members of the society; to advise if necessary, reprove any member who may be in fault, or found delinquent in his duty."

This established the elders as a court for the settlement of all disputes and misunderstandings amongst the members of the society.

> "3d. To admit new members into the society, and to expel them therefrom. *New members when admitted shall subscribe this agreement* as the evidence of their membership, *and of the* rights acquired by, and the duties imposed upon them."

The prerequisite to membership in the society was, as all the oral testimony in this case agrees, and it is, and ever has been, that the member joining shall

> "subscribe this agreement as the evidence of their membership."

There was no other evidence of membership than the signature to the agreement, and this was a *sine qua non* to membership.

Then this agreement not only evidenced the membership, but, in addition, stated,

> "the rights acquired by, and the duties imposed upon them."

Thus, the agreement of 1847, and the preceding agreements of 1805, 1827, and 1836, when examined, would specifically determine the rights of each member, and the duties of each member.

> "4th. To establish regulations for the maintenance and improvement of the morals of the society, and for the instruction of its members."
>
> "5th. To appoint one or more of its members spiritual leaders and instructions with such authority in relation to church discipline as shall be conferred by the board.
>
> "6th. To remove from the Board of Elders and to declare his seat vacated, also to remove from office either or both of the trustees hereinafter appointed for the management of the external affairs and their successors in office.

"7th. To fill all vacancies in the Board of Elders, occasioned by the death, resignation or removal from office any of its members and their successors, and so as often as a vacancy shall occur, to fill all vacancies in the office of trustee, when either or both of the trustees or their successors, shall die, resign his office, or be removed from the same, and so often as a vacancy shall occur.

"8th. The concurrence of six members of the Board of Elders shall be deemed the act of the board and a legal exercise of any of the powers hereinbefore conferred on the said board."

A further provision was for a book of record, which should be

"full and absolute evidence of the facts and proceedings therein contained,"

but such book does not seem to have been kept.

Article 4th:

"We do further ordain and establish a Board of Trustees for the *exclusive* management of the *external* business and affairs of the society, which board shall consist of two persons, who shall be members of the Board of Elders, and their successors, who shall be appointed as hereinbefore provided."

EXTERNAL BUSINESS.

This Board of Trustees was for

> "the exclusive management of the *external* business and affairs of the society."

It was to consist of two persons, each of whom was to be a member of the Board of Elders.

What did they mean by *external* business? It was contrasted with internal. It was not, then, the shops in Economy, or the farm, or the dairy, or the home store.

It was *external*, and it was *external business*, external affairs.

What does that include? All kinds of business. *All kinds of affairs.*

It included all the traffic with the world and all the worldly business,—the oil, the coal, the lumber, the iron, the steel, the bank, the railroads, the purchase of real estate and laying it off in lots and selling the lots,—and all the multiform and extensive ramifications of the numerous business enterprises.

Article V:

> "The said trustees shall jointly and severally have and exercise the powers following:

Note that the power is joint and several. Not merely a joint, but also, equally several.

> "In their own names or that of *either of them, or otherwise*, to purchase and *sell*, deal, barter, exchange, and traffic, make all contracts and bargains

> in the prosecution of the business, to invest the funds in stocks, and other securities, and make transfers and assignments, to collect debts, receive and pay out moneys, settle claims, compromise disputes, institute legal proceedings, appoint and dismiss agents, clerks, and attorneys in fact, and at law, *and generally to transact all the external business affairs of the society.*"

It is now said their sole power was to invest funds as trustees usually do. This is but one of their powers.

Ratification and adoption by agreement of 1890. Read it.

The bill approved all of these until 1890, but now they are all void.

Couldn't make partnership. Why not?

The agreement expressly authorized the trustees

> "in their *own names, or* that of either of them, or otherwise"

to do what?

Merely invest trust money as an ordinary trustee, as the appellant now allege?

By no means.

But, also, to

> "purchase and sell, deal, barter, exchange and traffic, make all contracts and bargains in the prosecution of the business, to invest the funds in stocks and other securities."

There is no limit whatever to

> "the business"

to be prosecuted.

In all respects the trustees might

> "sell, deal, barter, exchange and traffic."

And, in addition, the trustees are authorized

> "generally to transact all the external business affairs of the society."

Under these agreements, and, especially, since 1847, the trustees carried on and engaged in almost every conceivable business.

They were in the oil business; they were oil producers and oil refiners; they were in the business of the manufacture and sale of glass, of iron, of steel, of all kinds of hardware and cutlery and files, of cars, of woolen goods, of silk goods, of bicycles, of whiskey, of beer, of wine.

They laid off plan of and sold lots, and, really, built up Beaver Falls thereby.

They ran saw mills, great and small.

Were largely in the timber business and coal business.

They built railroads and were a large factor in the construction of the Pittsburgh & Lake Erie Railroad.

They organized a bank, and for years it was one of the largest in Western Pennsylvania.

They did business in their own names and the name of others. They had agents and partners.

They did all this prior to 1890, during which period the bill in this case says the society was perfectly conducted.

In 1890, all of the then members of the Harmony Society executed a new agreement, which recited and approved of the prior agreements, but, also, specifically approved of everything the trustees had done.

The agreement enacted as follows, (see Record, vol. 1, pp. 71, 72):

> "We do hereby approve and confirm any and all acts, matters and things done and transacted by the board of elders of the Harmony Society, as the same was from time to time constituted, since the date of the articles aforesaid, establishing said board, and

we hereby ratify and confirm the appointment of the present board of elders, to wit: Jacob Henrici, Ernest Woelfel, Michael Staib, Johannes Scheid, Moritz Frederick, Gottfried Laupp, J. Jacob Niclaus, Herman Fishern and John S. Duss.

"We do also hereby approve, ratify and confirm all acts, matters and things done, transacted and performed by the *Board of Trustees of the Harmony Society*, constituted first, of Romelius L. Baker and Jacob Henrici, until January 11th, 1868; afterwards, and from that date until January 21st, 1890, of Jacob Henrici and Johnathan Lenz, and since the last mentioned date, of Jacob Henrici and Ernest Woelfel, hereby ratifying, confirming, holding, declaring as good and effectual in law and in equity, all acts, matters and things done, transacted and performed by each and all of said trustees in the purchase and sale of personal property, and in the making of contracts, investment of funds, purchase, sale and transfer of stocks, bonds and other securities, loaning or borrowing money, collection and payment of moneys, settlement or compromise of claims or disputes, in the institution and prosecution of legal proceedings, in the employment and discharge of attorneys in fact and at law, in the making of donations, in the purchase of real estate, and in the sale thereof, in the execution and delivery of deeds, conveyances, transfers and assignments, whether of and pertaining to real or personal estate, in the execution or delivery of notes or obligations of any kind, and generally all acts heretofore done by said trustees, in the conducting, managing and transacting of the business of the society, and whether done by said trustees or either of them, severally and in his own name as trustee, or jointly in the joint names of himself and his co-trustee."

Yet, with all this, it is now said that the only power the trustees had was to loan money!

There is no limitation which confines them solely to external business and external affairs transacted by themselves. All the *external business* was committed solely to them, and

also the mode of its transaction, whether separately or jointly with others.

They could then do this in the name of any other person, natural or artificial. There is no limitation put upon the business which the trustees may engage in, nor the manner in which, nor the extent to which, this shall be done. This is left to the discretion of the trustees, and they are given absolute, unlimited and supreme power,

> "to transact all the external business and affairs of the society."

The trustees, at any time, could change real into personal property, and personal property into real. They, therefore, could convey real estate, and accept in lieu thereof personal property, such as stock or money.

> "2d. To make donations to seceding and excluded members and to the representatives of those who are deceased and for such benevolent and charitable purposes as they may deem prudent and fit."

The donations, it will be noticed, were to those withdrawing and the representatives of the dead, and for benevolent and charitable purposes. The size of such donations, and when, and to whom given, are left exclusively with the trustees.

> "3rd. The said trustees shall have power jointly to purchase real estate in their own names and also in their joint names to grant, bargain, sell and convey all or any of the lands and tenements now or hereafter owned by or belonging to the said society, and for this purpose to execute deeds of conveyance in fee simple or otherwise in their joint names, but the proceeds of all such sales shall be held in trust for the society."

> "4th. This provides for the rights of possession, entry and action in reference to litigation connected with the society's property."

> "5th. The powers hereby vested in the said trustees shall extend to and embrace all the property of said society, real, personal or mixed, whether standing or held in the name of the late Frederick Rapp, the said George Rapp, or in any other name or form whatsoever."

This last is a reiteration of the broad powers of the trustees and extends to all the property of the society, real, personal and mixed; and it is also an affirmation of the proposition that the property was not then necessarily held in the name of any one person, for the agreement says:

> "whether standing or held in the name of the late Frederick Rapp, the said George Rapp, or in any other name or form whatsoever."

Article 6th:

Declares that the entire property—real, personal and mixed—of the society

> "shall be *deemed the common property of said society*, and each trustee now or hereafter appointed hereby disclaims all *personal interest* in the present resources and future earnings of the society, *other than that of a member* thereof, according to the articles of association hereby re-established and continued; and according to the present agreement."

This again affirms that the community owns the property, and that the individual had no specific, separate, personal rights thereto, or thereunder. His personal rights were under the covenants made to him. His rights as a member of the society, as a part of the indivisible whole, were in common with all members, and were joint, and terminated and ceased—as did also his right to enforce the covenants—when he died or departed from the society.

His right was wholly and solely, and only an individual and personal right, which did not survive him, which he

could not sell or will, and of which he could not ask partition.

The agreement of 1847 did not alter the provision of the said contracts of 1805, 1827 and 1836 in reference to the rights, duties and interests of the individuals composing the Harmony Society; but it did change the government from the individual patriarch, who was the supreme ruler, to a government by and through a board of elders and board of trustees, who had the powers of a patriarch. Under the absolute patriarchal government the patriarch appointed his successor, as he this day does in some of the tribes in Asia and Europe.

The respective rights of the individuals who composed the Harmony Society were not enlarged, but so far as the property right is concerned, were practically left where they were, except that these rights were made subject to the governing powers of the board of elders and the board of trustees.

It is not necessary to further examine now the agreements of 1890, 1892 and 1894. Nothing in either of them changes any of the provisions of the former agreements. Each adopts, confirms and approves all said prior agreements.

CONCLUSIONS AS TO MEANING OF CONTRACTS.

In a broad, but perfectly correct way, these agreements may be defined as contracts between the joining member and all the others who then constituted the Harmony Society, and also contracts *inter sese.*

Each, on joining, gave up all—promised obedience and work in consideration that the society would feed, clothe, maintain and educate each for his or her life, and their families after them, so long as the joining member or his family continued in the society.

A breach of his covenant of obedience or of work—and especially his withdrawing from the society—rendered it impossible for him to insist upon the performance of the covenants by the society. These covenants were dependent. Only while he was a member and worked for it was he entitled to performance for his benefit.

The very nature of the covenants of the society made shows they were only personal to the joining member, and for his life, not for his heirs or remote descendants. They were:

(*a*) To adopt him as a member.

(*b*) *Whereby* (that is, because of his membership), he obtains the privilege of being present at every religious meeting, and of receiving instruction in church and school.

(*c*) The society is to supply him with the necessaries of life—clothing, meat, drink, lodging, for themselves and their families, and this includes their days of infirmity, when unable to labor.

(*d*) When sick, medicine, attendance and consolation.

(*e*) If die, and leave family, they shall be provided for,

"so long as they remain in the society."

(*f*) Return of value of contribution if withdrawn in the agreement of 1827 was abrogated by the agreement of 1836.

The gift, or donation, was absolute, it and the covenant of obedience and work was the consideration for the adoption as a member, the church and school privileges and the furnishing of meat, drink, lodgings, medicines, support of family and return of value on withdrawal (*but only on withdrawal*).

The contract, *inter sese*, was the affirmation of the general policy of the society, and its objects and purposes.

THOSE WHO COMPOSED THE SOCIETY AT ANY ONE TIME ALWAYS AND FROM 1805 DOWN TREATED ALL ITS PROPERTY AS BELONGING SOLELY TO THEMSELVES.

Attention should be called to a most significant construction, which the society itself put upon the power of its members at any time, and that was, that the persons who at the time constituted the members could make such new contracts as they saw fit, and this without any reference to the heirs of those who were dead, or to those who had left. This right was constantly asserted from 1805. It was done in 1805,

1821, 1832, 1836, 1847, 1890. It was in the most pronounced manner the assertion of the right of the community as it existed at the different times to add to, alter and change the written contracts.

In 1827 it added to the contract of 1805 the Patriarchal Government and Communism.

In 1832 dissensions arose in the society, which then consisted of 257 persons. Count de Leon led one side and George Rapp the other. The result was that Count de Leon and his followers, in all 176 persons, withdrew and took as their share of the common funds of the society one hundred and five thousand dollars ($105,000), and in addition sixty thousand francs (60,000), and released to

> "George Rapp and his associates * * * all their right, title, interest and claim in law or equity in and to all the estate, real, personal and mixed, *belonging* to the society of George Rapp and his associates or vested in any person or persons in trust for them."

Here was in 1832 a distribution of all the society's property among the then existing members. De Leon and his party took about $117,000, and Rapp and his party the balance.

There was no consideration for those members who had left or died in the society.

The then membership constituted the society and were the sole owners of all of its property.

In 1836 the *then* members, without thought of those who had left or were dead, struck out Article VI. of the agreement of 1827, and thus radically changed the provisions as to the return of the value of property to withdrawing members.

In 1847 the then members organized a new mode of government. It substituted a Board of Elders and Trustees instead of the patriarch and general agent, and gave them the patriarch's power. No member denied the right. No heir of any dead member questioned the right.

In 1890, after eighty-five (85) years of the existence of the society, and more than fifty years after the last agreement in 1847, the *then* members recite the facts as to the agreements of the society and the action of its Board of Elders and Trustees, and confirm and approve the same.

In 1892 the then members made a supplemental agreement affirming that of 1847 and giving broader powers to the Board of Trustees, and defining that the sole proof of membership in the society shall be the book containing the roll of membership and signatures therein.

Then, too, the whole existence of the society outside of its written agreements is full of facts which prove the constant reiteration and assertion that those at any one time—in 1805, 1821, 1827, 1832, 1836, 1847, 1870, 1892, or at any intermediate time—composing the live membership—*were the* society; owned all its property; could sell or give it away; change the rules for the government of the society; refuse any longer to refund the value of property contributed by withdrawing members; change the business of the society; change its place of abode—from Butler, Pennsylvania, to Posey county, Indiana—from there to Beaver county, Pennsylvania; take in as many or as few as those at the time constituting the society deemed wise, sell all its real estate, as was done in Butler county, Pennsylvania; and buy new real estate in Indiana; again sell the Indiana real estate and buy new real estate in Beaver county, Pennsylvania; turn per-

sonalty into realty, or realty into personalty; at one time run a brewery, making beer, and a distillery making whiskey; and again build railroads or engage in the oil business, coal business, steel business, iron business, and nearly every kind of business the ingenuity of man in Western Pennsylvania had devised; and in each one of these different occupations necessarily risk the assets of the society to a greater or less extent, if the same proved unsuccessful. They gave away vast sums of money; they actually divided the property in 1832. In all ways they repeatedly and always asserted that the members at any one time were the society, the owners of all its wealth.

In the agreements of 1805, 1821, 1827 and 1836, there is constant recognition that the *then living members* DID constitute the society and owned all its assets, and as we have seen, this was especially so in the agreement of 1836 which struck down and completely obliterated the before prominent doctrine of the reimbursement of the value of property contributed when one withdrew. This very reimbursement was an added assertion to the reiterations in the Articles, that those living and *then* members were *the* society, for if, where one withdrew, he still had a property interest in the joint property of the society, why pay him the value of his contribution?

But this quiet assertion in all the articles was specifically stated in the agreement of 1847 in plain language. Not stated as a matter for dispute or controversy, but of an admitted and generally recognized fact that the then living members *did* constitute the society. Its language is:

> "Be it known to all whom it may concern that we, the undersigned, surviving and remaining members

of the Harmony Society, and CONSTITUTING THE SAME, do severally, etc., etc."

Nothing is said here of deceased or withdrawn members, or their heirs or legal representatives. No one of all those deceased or withdrawn members ever questioned, by themselves or their heirs, this assertion.

RULES OF CONSTRUCTION.

This asserted and exercised right was practical and continuous; it was a construction of the then existing articles of agreement, and the assertion of the right of the surviving members, as a community, to all the property of the society, and to govern it as they saw fit, and that the individual member who died or withdrew cut himself off from and terminated all his rights to the society or its property.

There is no surer way to ascertain the meaning of a contract, and the rights of parties under it, than to see what the parties have done in carrying it out.

Its practical interpretation

"is entitled to great, if not controlling, influence."

Topliff vs. Topliff, 122 *U. S.*, 131.
Merriam vs. U. S., 107 *U. S.*, 437.
District of Columbia vs. Gallaher, 124 *U. S.*, 505.
Lehigh Coal Co. vs. Harlan, 27 *Pa.*, 439.

Applying such a rule, can there be a doubt that from 1805 down to the filing of this bill in 1894 everybody agreed that the living members at any given time *did* constitute the society and own all its property.

BILL SEEKS DISTRIBUTION OF SOCIETY'S PROPERTY.

What the present bill in equity seeks to accomplish through the remedies by injunction, receiver, and a decree for an account—see seventh prayer of the bill—is shown in that prayer, which is as follows:

> "That your Honors will order a decree, a marshalling of the assets which were of the Harmony Society, and a winding up of its affairs, and a division and distribution of its assets, real and personal, either by means of a sale under order of your Honorable Court, or in such other manner as your Honors may deem most expedient to and amongst the parties legally and equitably entitled thereto, including your orators, and that your orators may receive their just share and proportion of said assets, real and personal, in severalty."

The plaintiffs each want in severalty a share of all the property of the Harmony Society.

What does that property consist of?

As per Mr. Dickson's statement, certain real and personal estate, subject to certain debts.

When did the society become the owner of such property?

There is no specific answer to this save that *all* of it was purchased or earned after the society located at Economy, in Beaver county, which was in 1824.

APPELLANTS HAVE NO RIGHT TO ANY PART OF THE SOCIETY'S PROPERTY.

The real estate at Economy is its oldest acquisition, and the Leetsdale property and all the personal property was acquired in later years.

It is certain that most of it was acquired in external business or in profits from it.

It is also certain that no one of the members could possibly identify the property any ancestor put into the society.

What possible claim, in law or equity, can either one of these ancestors have to the property the Harmony Society owns in 1896?

Those who left did so over seventy (70) years ago. How is it possible to now put life in such a claim?

If the theory of the plaintiffs be correct, that all the descendants of all persons who ever were members of the Harmony Society may, at any distance of time, after the death or withdrawal of the ancestor, demand an account of, and share in, the property of the Harmony Society, see what it leads to.

Mr. Duss showed that there have been 1,050 members of the Harmony Society.

Our opponents more than double this number.

The descendants, lineal and collateral, of all these are, under the plaintiffs' theory, entitled to a share in the property, and if they are so entitled they would seem to be necessary parties to this bill.

There would be several thousands of such persons, and even if the society had millions, the share of each would be a trifle.

If it were true that the member who withdrew still held his rights in and to the community and its property, and when he, or those still in the society, died, the heirs at law of each could assert them, how would you define such rights? What were they? Could the heirs force themselves into the society and demand support? Could the heirs at any time insist on a partition of the property? Could they demand an account, and, if refused, force a settlement? Could the one who withdrew do so? Could the heirs of one who died in the society do so? Have all the heirs and descendants of all the dead members of the society a property right in its assets? A right entitling them to interfere in its management?

If so, how futile these written agreements were, and what a weak, instead of a strong, sturdy society the Economites were!

Surely these written agreements never meant that such a result should follow from the practical workings of the society. It would be to give to such decedents, for seventy years after their death, a share in the work and labor of hundreds of persons.

What part of any one of these articles shows even a leaning toward such a result?

What decision is there, what principle of law, which would even squint at it?

Nor could it matter when the question is raised. If the heirs of the member who died in 1827, or '834, or 1888, can come in and share in the distribution of the property of the society *after* its dissolution, it must be because the dead man left his heirs a property right at his death, and this property right has all along existed and comes into fruition only when the society is wound up. Now, if this be true, what kind of a property right is it? It is not an estate in possession. Even the appellants do not claim that. They admit they must wait until the society is dissolved. It can't be in reversion or remainder, as we have seen and will see. All the agreements especially bar the dead man up until the moment of his death from so claiming, and he couldn't leave to his heirs an estate he never himself had. It can't be a resulting trust, because the agreements equally bar that, as we have read. So we see how shadowy and uncertain, and, indeed, unwarrantable, this alleged property right is and how incapable it is of definition.

What word is there in any one of the written agreements of the society which could possibly be construed to sanction such an extraordinary claim as the appellants assert? As the Shales, plaintiffs, claim because their ancestors died in the society about 1830, *therefore* in 1892, if the society attempts to distribute its present assets among its members, the Shale descendants may claim.

As bold as this proposition seems it is the legitimate result of going outside of the agreements and allowing, contrary to their express words, the heirs of dead members a property right. If one has it, why not all?

MEMBERS OF SOCIETY AT ANY TIME MAY DISTRIBUTE ITS PROPERTY AMONG THEMSELVES.

Of all things these articles do seem particularly and carefully to accomplish it is that the Harmony Society at all times is composed solely and only of its *then* members—not of those, and also, all the descendants of its dead and withdrawn members, but of its present actual members.

In the case of its dissolution how would the assets be distributed? There are now few members of the society. In all there have been at least 1050 members. Into how many shares would the property be divided? Judge Greer, in the Nachtrieb case, held, among only the present live members.

It is the society, as a society, which owns its property. It is the entire body as one whole. If at any time the society did dissolve, its property would go to the persons who then were its members. No one else has any legal or equitable claim to it except those members. To them, and to them alone, it would belong, and among them it would be divided.

The society proved this very thing by the division of its assets it made with Count de Leon in 1832. It could not then have done that if the heirs of all deceased members were entitled to share.

The decisions of this court and other courts of last resort are unanimous in holding just as we here claim.

The living members in the society at any one time compose it.

The different agreements speak of the society as

"George Rapp and his associates."

The joining member surrenders and conveys his property to and makes his covenant with

"George Rapp and his associates."

He is adopted and taken into the community by

"George Rapp and his associates,"

and all the covenants are from them to him.

Now *his* covenants are his own individual undertakings. He does by express works exclude any idea that his heirs or legal representatives can at any time claim through him against the society, either for property conveyed to it or for labor done, and *his* undertakings are personal to himself. He gives to the society (a) all his property; (b) agrees to submit to all the society's laws and to work and labor for it. He receives from George Rapp and his associates covenants personal to himself that they (a) adopt him as a member of the society, thereby each obtains the privilege of being present at religious meetings and of receiving instructions for each and his family; (b) will supply him with all the necessaries of life, clothing, meat, drink, lodging, etc., during health and sickness; (c) if one dies his family shall be provided for,

"so long as they remain in the association."

Each agreement recognizes on its face that any one member may at any time leave the society, and the consequences of

so leaving are fully provided for. The duration of his connection with it lies solely with himself, for he cannot be expelled so long as he complies with his covenants.

Now, suppose any one member would claim that the society had failed to keep its covenants with him, and brought suit, *whom would he sue?*

Evidently the members *then* composing the society. He could not sue the personal representatives or heirs of those who had left and died, or who had died in the society, because, on the face of the agreement, each might at any time leave, and his covenant as one of George Rapp's associates was only *as an associate* and bound him no longer than he was one. How could his heirs or legal representatives be asked to perform the society's agreement to feed and clothe and give each the benefit of church and school? The covenant the departing member made was but as one of the society with the words writ large in the agreement that he might at any time sever his connection with it.

Under the agreement of 1847, the society appointed two trustees to conduct its external business, and to these it gave the power to trade in all its branches, and, of course, thereby incur responsibilities. Now *A*, a member, leaves the society, say in 1850, and dies. The trustees incur indebtedness long *after* he leaves, say in 1870. Is *A* liable for that debt? Could the creditor sue and recover judgment against his personal representatives or heirs?

The answer seems plain that he could not, for *A* was not, in 1870, a member of the society, nor were his heirs, executors or administrators.

It is the persons at the time making up the membership who constitute the society, not these and the heirs of all the dead, but the present live members only.

DURATION OF SOCIETY.

No one of the agreements contains any provisions regulating the duration of life of the society. Nothing is said as to how long it shall exist.

It seems, therefore, plain that if at any one time all its members agreed to a dissolution, that would be the end of it. It exists merely because of the co-operation of its living members. When once all these members agreed not any longer to co-operate and not any longer to carry on the society, it, of necessity, would terminate.

This court, in Goesele vs. Bimeler, 14 *Howard*, 590, examined and construed a similar agreement of the Zoar Society, located in Ohio, and decided, among other things, that,

> "they provide for the continuance of the society for an indefinite period of time, in the *exercise of the discretion of the members.* The majority of the members may require a sale of the property and break up the association. In fact, the majority governs by the election of its officers. Members may be expelled from the society and new ones admitted under established rules. Whilst the society has the means of perpetuating its existence it may

be said to depend for its continuance on the will of a majority of its members."

The appellants do not pretend that the heirs of deceased members have any voice in the question of its end. They admit that so long as the society exists none of the heirs of deceased members can claim any of its property. Thus they leave to the living members the question of the length of its existence.

LIVING MEMBERS ABSOLUTE CONTROL OF PROPERTY.

The living members may, and, in fact, do, have all the property so long as they stand together as the society. They can sell the property, make donations of it for charity or to withdrawing members, may use it for their own support, may risk it in business, may thus wholly dispose of it and no heirs of any decedent could lawfully complain.

In this use they continually exercise the highest powers of ownership, for they dispose of the property so as to render it impossible, after the dissolution, for the heirs of decedents to regain it. When they donate to charities, when they use for their own support, they most effectually destroy, so that the heirs of decedent may not and cannot follow it, and the extent of this use and these donations rests, under the articles, *wholly* with the live members.

Now all the rights of each member, be he living or dead, are through and by means of these written agreements. Only through and by means of these agreements has he any

rights whatever. If, then, the heirs of the deceased members have any right to the property it must be because of some provision in these articles. They admit that they have none so long as the society is in existence. Where is the clause, then, that gives them the right when the society ceases to exist? All these articles we have printed and analyzed and will refer to them again, and one thing in them all seems plain, that the contract of the society was personal to the member, and when, by the very words of the articles, the member died or left, he thereby totally terminated all his claims upon the society and to its property. No one of the articles in the remotest degree hints at the heirs of the dead man having an estate in the property of the society. If such an estate so nebulous as to defy definition or classification does exist, it is contrary to the plain language of the only claim of title it could have, *i. e.*, the written agreements of the ancestor.

NO INJUSTICE IS DONE THE DEAD OR DEPARTING MEMBER OR HIS HEIRS.

The written agreement which he made demonstrates this. In that of 1827 all the then members asserted, and all subsequently joining agreed that:

> "And, whereas, it is necessary to the good order and well being of said association that the condition of membership should be clearly understood, and that the *rights and privileges* and duties of every individual therein should be so defined as to prevent mistake or disappointment on the one hand and contention or disagreement on the other."

Therefore, the written agreement was made. To Rapp and his associates each member gave his property, and in addition agreed to submit to the regulations of the society, to obey the superintendents and to promote the welfare of the society by the labor of his hands.

In consideration whereof, Rapp and his associates agreed to and did adopt each as a member of the community;

> "Whereby each of them obtains the privileges of being present at every religious meeting, and of receiving not only for themselves, but also for their children and families, all such instructions in church and school as may be reasonably required, both for their temporal good and for their eternal felicity."

And, in addition, Rapp and his associates agree to supply each

> "with all the necessaries of life, as clothing, meat, drink, lodging, etc., for themselves and their families."

And this shall be when sick as well as when well.

But, so the agreement further reads, if one should

> "violate his or her agreement and would or could not submit to the law and regulations of the church,"

and for this or any other cause withdraw, then he shall, under no circumstances, claim or be entitled to anything, either for work and labor done or even the value of his property contributed, as see the agreement of 1836.

Here, then, one gives up his labor and his property, in consideration of which Rapp and his associates agree he shall attend all religious services and school, and be fed and clothed

and looked after in sickness and in health, and when one dies his family shall also be cared for,

"so long as they remain in the association."

His life measures the duration of the period when he can eat or drink or attend church or needs clothes or medicines, and *only when*, and as long as he continues a member of the society, do Rapp and his associates promise to, *or*, *indeed*, *could*, attend to his personal and spiritual wants.

When we look abroad and see the misery and want in so many human lives, see the small percentage who accumulate and the large percentage which fails, is it to be wondered at that many a man and woman willingly agree to give the little each has and work with his and her hands for the assurance during all their lives of *plenty*—not alone for each, but for their families?

When one leaves the society or dies in the society, has not the society fully kept its part of the agreement, if it has so provided for the dead one during all his life the food, clothes, etc.? and if so, how is he or how are his heirs injured or treated unfairly by being shown these written agreements and told death or departure ended this member's ability to longer keep his covenants to labor, etc.; we have fully kept our covenants, and you have no possible claims on us or on our property; and so your ancestor agreed in writing.

This is proven:

(1)—By the express words of the agreements; reiterated over and over again by those of 1805, 1821, 1827, 1836, and subsequently.

(2)—By the inevitable and necessary inferences from all the agreements taken together, and the scope and limit of the purpose thereof.

(3)—By the settled practice and thus construction of these agreements during all the society's life.

EFFECT OF ABSENCE OF EXPRESS PROVISION FOR DISTRIBUTION.

If it be argued that the agreements contain no provision for the distribution of the property of the society on its dissolution, the answer is threefold:

(1) How does that help the plaintiffs? Of themselves they have no merit. Their claim is the merits of their ancestors. But these ancestors put in black and white just what their rights in and toward the society and its property were and bound themselves by express words, for themselves and their heirs, never to claim any other; *never* to do it. They did not qualify nor limit this to the existence of the society. They made it broad and unqualified and included the existence and the possible dissolution of the society. They expressly included their heirs and covenanted against them, as we have seen.

The agreement of 1827 provides:

> "We, the undersigned, for ourselves, *our heirs*, executors and administrators, do hereby give, grant and forever convey to the said George Rapp and his associates and their heirs and assigns, all

> our property, real, personal and mixed, whether it be lands and tenements, goods and chattels, moneys or debts due to us jointly or severally in *possession* or in *remainder* or in *reversion* or in expectancy, whatsoever or wheresoever, without evasion or qualification or reserve, as a *free gift* or *donation* for the benefit and use of the said association or community; and we do hereby bind ourselves, *our heirs, executors and administrators* to all such other acts as may be necessary to vest a *perfect* title to the same in the said association, and to place the said property at the full disposal of the superintendents of the said community without delay."

Then follows as to labor:

> "that we will never claim or demand, either for ourselves, *our children* or *for any one belonging to us, directly* or *indirectly*, any compensation, wages or reward whatever for our or their labor or services rendered to said community or to any member thereof."

The agreement of 1836 provides:

> "Each individual is to be considered to have *finally* and *irrevocably* parted with all his former contributions, whether in land, goods, money or labor; and the same rule shall apply to all future contributions whatever they may be.
>
> "Should any individual *withdraw* from the society *or depart this life*, neither he in the one case, nor his *representative* in the other, shall be entitled *to demand an account of said contributions, whether in lands, goods, money or labor, or to claim anything from the society as matter of right.*"

The heirs of all the decedents are thus barred by plain words.

(2) As we have seen, the duration of the society is by the articles left to the live members of the society; at any time, by unanimous consent, they may dissolve.

Before dissolution, they plainly may squander or give away or lose in trade, all the property.

If they are such absolute owners of it then, what change does the dissolution, which they are the only people who can decree, work so as to take from them what before they undeniably had? What article so provides? What reason so dictates?

Why if they constitute the society, and the society owns all the property, will it not go to the persons composing it, and why is not this as certainly left to the members at any one time composing the society, as the power of dissolution itself?

It would be an arbitrary distinction to say that *before* the dissolution they could safely divide, but not afterwards. But before the dissolution they all along and continuously did divide among themselves. For many years under Henrici and Lentz the income of the society was insufficient for the support of its members, and the members used the corpus to live on. Why could not they do this now? For many years under Henrici and Lentz the society lost vast sums of money in the file and cutlery works and in the bank. Large sums were from time to time given away to departing members and outside charities. Are not all these the absolute proofs of ownership; and if they, who at any one time alive compose the society, and can so dispose of its assets as we have seen, why may they not agree to divide among themselves? Who is hurt? Who has a right to complain? Certainly not, under the articles, the heirs of deceased members.

(3) As we have seen, in 1821, 1827, 1836, 1847, 1890, 1892, 1894, the then living members of the society adopted new articles and changed the old ones to suit themselves; they

may, it is admitted, terminate the society. If they have such powers, why may they not, by unanimous consent, add to the articles of provision that the society be dissolved on a certain date, and its then assets divided among its then members? It would only be doing what was done in a large way with Count de Leon in 1832, and only in continuance of the assertions theretofore constantly made of the right, at any time, of its then members to change its agreements. We see no necessity for such new article. The old ones, especially as interpreted by the acts of all its members for over fifty years, are all full to the effect that,

(*a*) The society, at any one time, is composed of its live members, *and only its live members.*

(*b*) Such members have the entire regulation of the society and its property, and can, if they unanimously agree, terminate the existence of the society and distribute its assets.

(*c*) That the withdrawal from the society of a member, or that member's death, is the end of all his connection with the society and terminates all his right to any of its property. His heirs can have no higher right than that of their ancestor.

(*d*) Of necessity, and by a process of elimination, in entire accord with the words of the agreements and the continual construction of them for over eighty years, the living members at the time of dissolution own the property.

JOINT AND INDIVISIBLE STOCK.

The answers to the contention that one of the clauses of the agreement of 1836 forbids this, are several:

That clause is:

> "All the property of the society, real, personal and mixed, in law or equity, and howsoever contributed or acquired, shall be deemed, now and forever, joint and indivisible stock."

(1) That is, as the four corners of the agreement plainly show, so long as the society exists. When it terminates, the property can no longer be joint and indivisible. The very foundation of the bill is that it has then become divisible and they are entitled to a share of it.

(2) The live members of the society at any one time could change that provision. If they decided to dissolve and distribute the property that would be of itself the change of that provision.

(3) *Joint and Indivisible Stock.*

It was undoubtedly joint, that is, the society's property; which society was composed of individual members. Being joint it necessarily included the idea of survivorship. It was indivisible, without unanimous consent—but with it divisible.

ANSWER TO QUESTION.

We are now ready to answer the question, ante page.

Is either one of the plaintiffs a part owner in the property, real or personal, of the Harmony Society?

The answer—*he is not.*

No one of the plaintiffs *is* a member of the Harmony Society?

No one of the plaintiffs ever was a member of the Harmony Society.

No one of the plaintiffs is the executor or administrator of any deceased member of the society?

No one of the plaintiffs could obtain a decree compelling the society to admit him as a member to the enjoyment of the rights of the deceased ancestor.

The claim of each plaintiff is because he is of lineal or collateral descent the heir at law, or next of kin, of some one now dead, who, in his lifetime, was a member.

We have demonstrated—

(1) That no one of the members, even while the membership continued, had any title to any part of the property of the community. He had no such individual interest in or right to any of the property as enabled him to sell it, or transfer it to another, or take it to himself, or have partition of it. His entire right was solely and only as a member of the community, and was personal to himself.

(2) His withdrawal or death terminated all his rights as a member of the community, and hence ended all right on his part in any way to intermeddle with the property of the community.

This was distinctly ruled in Schriber vs. Rapp, 5 W*atts*, 358, and it will be noted that case arose prior to the agreement of 1836, and was ruled on the contracts of 1805 and 1827.

(3) Prior to the agreement of 1836, when one who had contributed property to the joint or common fund withdrew from the society, he was entitled to the value of his contribution, without interest, payable in one, two or three years. This was a personal right to be enforced by him individually, and after his death by his executors or administrators—not by his heirs at law or next of kin.

No question on the right to recover any contribution arises in this case. There is no proof of such contribution by any of the ancestors of plaintiffs, and if there had been this bill is not founded on any such right, and if it was so founded the personal representatives, *i. e.*, executor or administrator, would be an indispensable party.

This bill is filed on the ground that the Harmony Society is now dissolved.

Not that it is in existence, and may be sued, but that it has been dissolved.

The agreement of 1827, as to a return of value of contributions, is from the society living and in existence to a withdrawn member.

It is not this case which asks for a distribution of property because of dissolution of society.

(4) Under the agreement of 1836 the property of the society was declared to be

"joint and indivisible stock."

That is, it was joint which gave the survivors the rights of all, and it was indivisible, because no one of all had the power to divide it.

This was a definition in accurate language of what the agreement of 1805 and 1827 provided.

One and all denied to the individual a separate property right in any of the property of the society, and each limited the individual to his joint right to the common property with all the other members constituting the society, and recognized his individual right only in the covenants and agreements which provided him school and church and food, clothes, etc.

In one and all of them withdrawal, or death, terminated the membership, and left the departing one with no further interest in, or right in, the society, or its property.

The agreements all contain mutually dependent covenants. The joining member is to render obedience and labor, etc., and the society is to find clothes, etc. Evidently, if the mem-

ber will not perform his covenant, he cannot ask the society to perform its covenants. And then his continued presence in the society is necessary to enable the society to feed, clothe, and house him. When he dies or withdraws it is no longer possible to do it.

The member's interest in the property was only as one of the joint community, and not as an individual. In the property he had no direct interest. By the agrement he expressly renounces all such interest. His sole claim to the property is because he was adopted a member of the society. When he ceases to be a member, whether by death or withdrawal, the right which arose wholly by reason of the membership terminates and ceases, much in the same manner as if he was a citizen of a village, or a member of a church, and left the same.

Death, or withdrawal from the society, forever terminated and ended all the so-called property rights of the adopted one, and all his rights to call for the performance of the covenants in the agreements to give him food, clothing, sustentation, etc.

It will be noticed that all of the ancestors of the plaintiffs, either

(1) Died while still members of the Harmony Society; or,

(2) Died after they withdrew from membership.

Now, the withdrawing was a voluntary act on their part, which cut them off from the society. One who died after he had withdrawn, and was still *in contumacium*, surely could impart no more right or title or claim to the company's property than if he had remained in the society, and had not withdrawn. If he could, the parable is outdone, for the slothful servant in that received only an equal sum with him who had labored all the day, while in the case suggested he would receive much more.

Death, whether while still a member, or after withdrawal, forever settled the personal, individual claim and right of the deceased as a member of the society, and he has nothing—he leaves nothing he can transmit to his heirs.

In each of the agreements the language is more or less specific, but always clearly stating the same idea—that an individual had no personal right or claim which he could sell or give away, or, in the case of his death, transmit to any other person, as to any of the covenants of the agreement, or any of the rights which, as a member of the society, he had in or to the common property of the society.

Thus, in the agreement of 1805, all jointly, not only on their own part, but,

> "on the part of our heirs and descendants, deliver up, renounce and remit all our estate and property, * * to George Rapp and his associates, * * as a free gift or donation, for the benefit and use of the community, and bind ourselves on our part, as well

> as on the part of our heirs and descendants, to make free renunciation thereof, and to leave the same at the disposal of the superintendents of the community, as if we never had nor possessed it."

Then, again, in case of withdrawal, all agreed—

> "never to demand any reward, either for ourselves or children or those belonging to us, for any of our labors or services rendered, but whatever we jointly and severally shall or may do, we will have all done as a voluntary sevice for our brethren."

Then, again, in case of a withdrawal, George Rapp and his associates

> "promise to refund him or them the value of his or their property brought in without interest,"

in installments, or, if nothing was brought in, and he departs openly, a donation shall be given.

The refunding, or donation, is only in case of voluntary withdrawal, and then the amount refunded is the value of the original contribution, without interest. This is the individual contribution that the party withdrawing had made. He is given nothing out of the common fund contributed by others. He is refunded only the value of that which he originally put in. As we have seen, it was a personal claim, to be enforced by personal action, which, on his death, would go to his executors or administrators, and would not descend to heirs at law. He might, under that agreement, sue the covenantors—Rapp and his associates—if they did not refund the value. This was his only right. He could not have filed a bill for the dissolution of the society and the partition of its property.

The agreement of 1827 made a joint and several covenant as follows:

> "We, the undersigned, for ourselves, our heirs, executors and administrators, do hereby give, grant and forever convey, to the said George Rapp and his associates, and their heirs and assigns, all our property, real, personal and mixed, * * * without evasion or qualification, or reserve, as a free gift or donation, for the benefit or use of the said association or community; and we do hereby bind ourselves, our heirs, executors and administrators to all such other acts as may be necessary to vest a perfect title to the same in the said association, and to place the said property at the full disposal of the superintendents of the said community without delay."

Then, in case of withdrawal, each and all covenant,

> "that we will never claim or demand, either for ourselves, our children, or for any one belonging to us, directly or indirectly, any compensation, wages or reward whatever for our or their labor or services rendered to the said community, or to any member thereof; but whatever we or our families jointly or severally shall or may do, all shall be held and considered as a voluntary service for our brethren."

Then Rapp and his associates again agree, in case of withdrawal,

> "to refund to him or them the value of such property, without interest, as he or they may have brought into the community,"

payable in installments.

The agreement of 1836 reiterates and approves of the agreements of 1805 and 1827, except that portion of the agreement of 1805 and 1827 which promises to refund to withdrawing members the value of the property contributed. That portion of the agreement of 1827 was rescinded; the members

of the society, among other things in this agreement of 1836, saying:

> "The said 6th article is entirely annulled and made void, as if it had never existed; all others remain in full force as heretofore."

Then follows a formal declaration in specific words of what was already in truth contained in the two previous agreements, such declaration being as follows:

> "All the property of the society, real, personal and mixed, in law or equity, and howsoever contributed or acquired, shall be deemed, now and forever, joint and indivisible stock. Each individual is to be considered to have finally and irrevocably parted with all his former contributions, whether in lands, goods, money or labor; and the same rule shall apply to all future contributions, whatever they may be."
>
> "Should any individual withdraw from the society, or depart this life, neither he, in the one case, nor his representatives, in the other, shall be entitled to demand an account of said contributions, whether in land, goods, money or labor, or to claim anything from the society as matter of right. But it shall be left altogether to the discretion of the superintendent to decide whether any, and if any, what allowance shall be made to such member, or his representatives, as a donation."

The agreement of 1847 approves the agreement of 1827, excepting section 6th, and also the agreement of 1836.

If plain words, carefully selected and properly placed, can make certain any one thing, it would seem that these agreements made certain the proposition that death, or withdrawal, terminated and forever ended all the rights of the withdrawing or dead member, and as all these rights were personal, nothing could go to his heirs at law.

The authorities seem to be uniform in approving the above proposition, and this in whatever state and by whatever court the matter has been considered.

OPINION OF THE CIRCUIT COURT.

While Judge Acheson, in his opinion, did decline to take up and pass upon the question of law as to *base* fee, perpetuity, etc., he, at the same time, in the body of his opinion, passed upon and approved of the conclusions hereinbefore stated as to the proper construction of the agreements—the utter want of title on the part of each one of the appellants to any portion of the society's property, and the fact that, under the agreements, on the departure or death of a member neither the departing member or the heirs or personal representatives of the dead member had any claim of any kind upon the society or to its property.

In his opinion the Judge said: (93 *Federal Rep.*, 529; see Record, 193 to 195.)

> "The constitution of the Harmony Society is embodied, and the general purposes of the association are set forth in a series of written agreements executed in the years 1805, 1821, 1827, 1836, 1847 and 1890. These agreements were signed at their respective dates by all the then members of the society. By the agreement of 1805 the doctrine of community of property became, and by the subsequent agreements continued to be a fundamental principle of the society. Its acceptance is an essential condition of membership. By the constitution of the society individual ownership of property is renounced in favor of the community or

society. The members have all things in common, and each is entitled to receive from the society necessary maintenance, support and education, and in return each is bound to render labor and obedience. The agreement of 1827 contained a provision that, if any member withdrew from the society, there should be refunded to him the value, without interest, of all property he had brought into the community. The agreement of 1836, however, rescinded that provision wholly, and stipulated that if any individual shall withdraw from the society, or depart this life, neither he, in the one case, nor his representatives, in the other, shall be entitled to demand an account of his contributions, whether in lands, goods, money or labor, or to claim anything from the society as matter of right, but that it shall be left altogether to the discretion of the superintendent to decide whether any, and if any, what, allowance shall be made to such member, or his representatives, as a donation. In view of the decision of the Supreme Court of Pennsylvania in Schriber vs. Rapp, 5 *Watts*, 351, and the decisions of the Supreme Court of the United States in Goesele vs. Bimeler, 14 *Howard*, 598, and Baker vs. Nachtrieb, 18 *Howard*, 126, it is clear that *the above-recited articles of agreement are valid contracts, and that thereunder, upon the death of a member of the society in fellowship, no claim, enforceable against the society or its property, passes to his heirs or personal representatives, and that since 1836 no member voluntarily withdrawing from the society could acquire any such claim.* Now, not one of the plaintiffs was ever a member of the Harmony Society. Furthermore, it does not appear that any of the persons through whom the plaintiffs claim contributed any money or property to the society. The master has found that no such contribution was ever made by any of these persons. The correctness of that finding has not been impeached. All the members through whom the plaintiffs claim, who left the society, withdrew in or before the year 1827. Presumably they retired upon terms satisfactory to themselves. If, however, those persons, so withdrawing, had any legal demands against the society, those demands have been barred by lapse of time.

Spiedel vs. Henrici, 120 *U. S.*, 377; 7 *Sup. Ct.*, 610. *The other persons through whom the plaintiffs claimed remained with the society and died in fellowship. They thus received and enjoyed all the benefits secured to them by the recited articles of agreement, and therefore no rights, enforceable against the society, passed from them to their heirs or personal representatives.*

"The soundness of the view that the deceased ancestors and collateral relatives of the plaintiffs could transmit to them no rights, enforceable against the Harmony Society, as a living organization, is impliedly conceded by the bill, for it alleges that the society has to come to an end. The bill proceeds upon the theory that a dissolution of the society had been brought about."

OPINION IN THE CIRCUIT COURT OF APPEALS.

That court, in an unanimous opinion by Gray, J., adopted in words the conclusions hereinbefore given by Judge Acheson, and affirmed the decree of the Circuit Court.

Schwartz vs. Duss, 103 *Fed. Rep.*, 528.

See *Record*, 214 to 218.

LEGITIMATE INFERENCE FROM THESE TWO DECISIONS.

While Judge Acheson did firmly decline to take up and discuss the questions of law above named, the legitimate conse-

quences of what he did rule confirm the proposition for which we have been contending, *i. e.*, that the assets of the society would go to the living members of the society at the time of the distribution. This necessarily follows from his findings, that the member who died and the member who departed terminated forever his respective connection with the society and rights to any of its property, and that the dead member left no title whatever of any kind to his heirs in or to any of the property of the society. *Consequently*, those members who were left were of necessity the owners of the property and entitled to do with it what they would.

OTHER AUTHORITIES.

The cases which have arisen by withdrawing members and others against the Harmony Society are as follows:

First comes the case of Schriber vs. Rapp, 5 *Watts*, 351, decided in 1836.

The Supreme Court of Pennsylvania, in Schriber vs. Rapp, considered the agreements of 1805, 1821 and 1827 only, as the case arose prior to the agreement of 1836, and is, therefore, specially significant of the reasoning hereinbefore urged, to wit, that the same result followed under the agreements of 1805 and 1827, as under the agreement of 1836.

In this case Peter Schriber, one of the members of the Harmony Society, died, and his administrator brought an action of account render against the society. It was proven

that the decedent had contributed largely to the society, but the case was decided against his claim. The Common Pleas Court held, page 359:

> "The articles of association executed by the plaintiff's intestate *are a complete bar to the plaintiff's recovery in this case*, unless the plaintiff's intestate has had a fraud practiced upon him, and been induced to sign them by fraud and imposition.
>
> * * * * * *
>
> "There is nothing in the articles of association given in evidence that renders the agreement unlawful or void; nothing in them inconsistent with constitutional rights, moral precepts, *or public policy.*"

Gibson, Chief Justice, delivering the opinion of the Supreme Court, among other things, said, in speaking of the Harmony Society, that it was not a partnership; and then, speaking and defining the rights of the members, he said:

> "At the period of initiation, the neophyte surrenders his worldly wealth to the society, reserving to himself but the contingent right of resumption in the event of his secession, * * It is supposed, however, that as the intestate had power, by the articles, to secede from the society and take out of it whatever he had brought into it, *the successor to his personal rights may exercise it as his representative. Such, however, are not the terms of the articles;* nor would a posthumous exercise of the power consist with the disposition he thought fit to make by dying in fellowship. An exercise of it by the administrator of one dead without kindred would wrest the property from the society, only to give it to the estate by escheat. The right of secession, therefore, *is intransmissible;* and were it not, the intestate's release would be a bar."

Nachtrieb vs. Harmony Society, 3 Wallace, Jr., 66, was decided by the Circuit Court of the United States in 1852, having been brought to No. 28 Nov. Term, 1849, in Equity.

That was a Bill in Equity, in which Nachtrieb alleged he had been a member of and worked for the society from 1819 to 1846, when he had been unlawfully expelled from the society, and prayed for an account of the sums due him for labor and of his share of the property of the association.

The Circuit Court—Grier and Irwin, Justices—held that Nachtrieb was *unlawfully expelled*, and he was therefore entitled to his full share of all the property the society owned. The members then being 321, his share was the 1-321.

Grier, J., in his opinion, 3 *Wallace, Jr.*, 82, held that,

> "each (member) had an equal right to and interest in their common property, and (each) had estopped himself *from even setting up any claim for property* or labor contributed to the common stock in case of a voluntary withdrawal from the society."
>
> " * * * * * In dealing with the rights of personal property, the court can only look at the agreements of the parties as written and signed by themselves. * * * * These (members of the society) accumulated for themselves; they have by joint labor accumulated property of great value which they hold as joint owners. The complainant had an equal ownership with his 320 partners. By their contract it had to remain joint and indivisible stock forever, but the complainant has his right to enjoy it equally with his fellows. Their articles of partnership or association provide for the case of any partner who chooses to withdraw or depart from it, but makes no provision for those who are unjustly driven away and expelled. * * * * The dissolution of the partnership by the wrongful act of the majority of the firm or association necessarily dissolved *inter sese*, viz., as between the expelled and the remaining partners, the covenants as to the

> indivisibility of their joint property * * * * and the proper measure of his compensation is the amount of his interest or share at the time of his expulsion. It is not like a mere corporate privilege or office to which a court of equity may restore a corporator who has been wrongfully expelled. It is a question of the enjoyment of the property. His copartners have ejected him from his joint use and enjoyment of their common property; they have severed the tenure as between him and themselves, and he has a right to his share in severalty. This is the proper measure of the complainant's compensation. * * * * Let the decree be for the one-three-hundred-and-twenty-first part of the whole property of the society."

In a concurring opinion, filed April 8th, 1852, Irwin, J., elaborately examines the different agreements, and arrives at the conclusion that the common property of the society belonging to the society, and if at any time it was dissolved it would be divided *among those who are the members when such dissolution occurred.* That these members could dissolve it and divide the property, and no one else except members could share in the division. That the unlawful expulsion by the society of Nachtrieb entitled him to his share of the common property.

The case was appealed to the Supreme Court of the United States, and is reported as Baker *et al.* Trustees, vs. Nachtrieb, 19 *Howard*, 126, and was decided in 1856.

The court below was reversed (without a dissent from Grier, J.), on the point that the receipt Nachtrieb signed when he left the society

> "must be treated as the contract of dissolution between the plaintiff and the society of their mutual obligations and engagements to each other."

So treated, the Bill in Equity was not properly framed to attack it for fraud, and hence it was conclusive that Nachtrieb had no claim against the society.

It will be noticed that the receipt was as follows:

> "To-day I have withdrawn myself from the Harmony Society and ceased to be a member thereof; I have also received of George Rapp two hundred dollars as a donation agreeably to contract."

This Nachtrieb case, as ruled in the Circuit and Supreme Court, is full to the proposition that by a voluntary withdrawal the one so withdrawing lost all his claim or rights of, in, to, or out of the common property of the society.

The case of Lemmix vs. Harmony Society No. 2, November Term, 1852, of the Circuit Court of the United States for the Western District of Pennsylvania, in equity, was a bill filed June 10th, 1852, alleging an unlawful expulsion, and praying for an account as in the Nachtrieb case. Issue was joined, testimony taken, and on February 3d, 1855, Judge Irwin filed an opinion dismissing the bill on the ground that the plaintiff had failed to show an unlawful expulsion.

Though a bond was filed for an appeal to the Supreme Court of the United States, it does not seem it was prosecuted.

This case is direct authority to the effect that the society may expel a member, and when properly expelled all his rights to the common property of the society cease and determine.

The next case was that of Speidel vs. Henrici et al., reported 120 U. S. Reports, 377.

The bill in equity was filed June 7, 1882, by Speidel, who alleged that he was at one time a member of the society, but left it in 1831 to be married.

The bill alleged fraud practiced by Rapp and his society against Speidel and other members; that the system of the society was contrary to the laws of the land, and against public policy; that the property of the society was held in trust by Henrici and Lenz, and was of great value, and the prayer was,

> "that said trust be rescinded and held for naught as resting upon fraud and iniquity, and being contrary to public policy and the laws of the land."

that an account of the trust estate be taken, and a distribution thereof made.

The defendants demurred on the following grounds:

(1) Statute of Limitations.

(2) Stale claim, which equity could not aid.

(3) Case stated in the bill not entitled to relief in equity.

The Circuit Court, McKennan, J., sustained the demurrer on the second ground. An elaborate opinion, to which we ask attention, was filed, and, amongst other things, Judge McKennan held:

> "The trust alleged here was instituted for the *equal and exclusive benefit of the members of the Harmony Society.* It was part of the religious, as well as secular, polity of the society. *Fellowship in the society was the only recognized title to participation in its benefits. When that fellowship ceased from whatever cause, all further interest in the trust and all the privileges of membership were necessarily lost and were denied.*"
>
> Speidel vs. Henrici, *15 Fed. Rptr., 753.*

In the Supreme Court Mr. Justice Gray delivered the opinion to which there was no dissent, sustaining the decree in the court below, and, among other things, that opinion says:

> "The trust on which Rapp, and the defendants as his successors, held the common fund of the Harmony Society, is described in one place in the bill as for the members of said families and the contributors of said fund and for their common benefit, *that is to say, as is clearly explained by what goes before, in trust for their common benefit as a community, living together in the community, working for the community, subject to the regulation, of the community, and supported by the community.* This was the 'said trust,' which, as the bill afterwards alleges, Rapp, up to his death, and his successors, until the bringing of this suit, 'always recognized and acknowledged.' The constant avowal of the trustees that they held the trust fund upon such a trust is wholly inconsistent with and adverse to the claim of the plaintiff that they held the fund in trust for the benefit of the same persons as individuals, though withdrawn from the community, living by them selves, and taking no part in its work.

"The plaintiff, upon his own showing, withdrew from the community in 1831, and never returned to it, and, for more than fifty years, took no step to demand an account of the trustees, or to follow up the rights which he claimed in this bill.

"If he ever had any rights, he could not assert them after such a delay; not on the ground of an express and lawful trust, because the express trust stated in the bill, and constantly avowed by the trustees during this long period, was wholly inconsistent with any trust which would sustain his claim; not on the ground that the express trust stated in the bill was unlawful and void, and therefore the trustees held the trust fund for the benefit of all the contributors in proportion to the amounts of their contributions, because that would be an implied or resultant trust, and barred by lapse of time. In any aspect of the case, therefore, if it was not strictly within the statute of limitations, yet the plaintiff showed so little vigilance and so great *laches* that the Circuit Court rightly held that he was not entitled to relief in equity."

POINTS DECIDED IN THE FOREGOING CASES.

Here, then, we have the Supreme Court of Pennsylvania in the *Schreiber* case decide flatly *that a member's death terminated his connection with the society and his legal representative was not entitled to recover anything from the society.*

The Circuit Court of the United States, Greer, J., on the bench, in the *Nachtrieb case* just as flatly held that each member of the society

> "had estopped himself from ever setting up any claim for property or labor contributed to the common stock in case of a voluntary withdrawal from the society."

Speaking further of a case in Pennsylvania (Comm'th vs. St. Patrick's Asso., 2 *Binney*, 441) where the Supreme Court had awarded a mandamus restoring a member of the corporation, Judge Greer said:

> "That was a corporation for benevolent purposes, where membership and not the ownership and enjoyment of property to the corporator's own use, was the object. Its members accumulated to give away or to expend on charitable purposes. *These accumulated for themselves.* They have by joint labor accumulated property of great value, which they hold as joint owners. The dissolution of the partnership by the wrongful act of the majority of the firm or association necessarily dissolves *inter sese*, viz: as between the expelled and remaining partners the covenant as to the indivisibility of their joint property."

He thus treated the society as dissolved *pro hæc vice* and divided the property among its members, 321 in number.

He gave to the one who sued the 1-321. To all the others, constituting 320, the 320-321.

This decree of Judge Grier was exactly the proposition we have contended for, *i. e.*, that the *property belongs to the living members who at any time compose the society, and this excludes every other person.*

This court, in reviewing the Nachtrieb case, held that the receipt which Nachtrieb gave, showing a voluntary withdrawal from the society, *ended and determined all his rights to its property*, and to the argument of Nachtrieb's counsel that the withdrawal was *not* voluntary, held the bill was not properly framed to raise that question.

The Lemmix case (not reported) was by an expelled member for his share of the society's property. The Circuit Court held he was properly expelled, and therefore had no longer any claim to the property of the society.

The Spiedel case was by the heirs of one who withdrew from the society, and filed a bill for a share in the common property. It went off on the question of laches, but the Circuit Judge, McKennan, said:

> "The trust alleged here was instituted for the equal and exclusive benefit of the members of the Harmony Society. * * * Fellowship in the society was the only recognized title to participation in its benefits. *When that fellowship ceased from whatever cause, all further interest in the trust and all the privileges of membership were necessarily lost and were denied.*"

This court, in reviewing the case below, defined the trust as

> " * * * in trust for their common benefit as a community, living together in the community, working for the community, subject to the regulations of the community and supported by the community."

CASES AS TO THE ZOAR COMMUNITY—SHAKERS' SOCIETY—ONEIDA COMMUNITY.

The next case to which we call attention is one arising under the Zoar agreement, a society in many respects like the Harmony Society, and the agreements and the general purports of the society being practically the same as that of the Harmony Society. The case arose in the Circuit Court of the United States for Ohio in 1851, and is reported as Goesele vs. Bimeler et al., 5th *McLean's Reports*, 223, and was heard by McLean, justice of this court. The governing portions of the articles of agreement of the Zoarites, made in 1819 and 1824, are given on pp. 224, 225 and 226 of the report, and are practically identical with the Harmony Society, especially in two respects: (1) That each of the members absolutely surrendered all his property to the society, and (2) the death or withdrawal from the society terminated all his rights in the society or to any of its property.

Goesele, the complainant in the case, had joined the society and remained with it until his death, in 1827. In 1851 this suit was brought by his heirs, claiming to be en-

titled to his share in the property of the society, and Mr. Justice McLean treated the questions at considerable length.

On p. 229 he stated that the legal questions in the case arose out of the articles of 1819 and 1824, and stated that the complainant alleged that (*a*) there is no legal grantee to whom the property was conveyed, and (*b*) that if there ever was a grantee, the grant would be void as a perpetuity. Disposing of those questions, and holding that neither of them was sound, the court proceeded, *inter alia*, to say (p. 230):

> "The agreement was that the equitable individual right to the trust should be relinquished for a common right with the other members, to the entire property. In effect, it was constituting a universal partnership, known to the common law, and which is not in any violation of any of its principles. The members of the society, in their own language, 'unite and bind themselves by and through this common and social contract, under the name and title of the "Separatist Society of Zoar," and they agree and bind themselves, and promise each to the other, and all together, that they will strictly hold to, observe and support all the following rules and regulations,' etc. The name of the society was used as a designation of the whole body, the same as the assumed name of a firm to designate its partners. *Individuality of ownership of the property then possessed by the members of the association was abolished, and also future acquisitions, for the common right of an interest in the whole. This common right was limited to the members of the association; consequently those who left it or were expelled forfeited such right.* This was a condition voluntarily adopted in the articles of association, and there is no evidence showing unfairness, deception or fraud in the agreement. * * *
>
> "The relinquishment of individual right, present and future, was to the society—in other words, to themselves—a giving up and surrendering an individual interest in a part of the property, for a common interest in the whole of it. By this arrangement, the members of the association were placed on an equality as to their interests in the property and

their enjoyment of it. Their minutest wants were alike provided for, through the agencies established; and this was the consideration on which the contract was founded. *That, in the absence of all fraud and unfairness, this was a bona fide and legal contract, cannot be doubted.* An important part of this contract was that the property thus surrendered should belong ONLY to the members of the association; *consequently the heirs of the members could not claim an interest in the property as heirs, but only as members.* Against such a disposition of property I know of no principle of law or morals. Any individual has the power to divest himself of his property, real and personal, for a valuable consideration. * * *

"Goesele and the other members, when they relinquished their individual property for a common interest in the whole, and appointed agents to manage the concern, expressly agreed to receive as a consideration for their property and labor a support for themselves and their families, including clothing and every other provision necessary for their comfort. The acquisitions would necessarily increase their comforts, by enlarging their means of subsistence; *but the property was only to be enjoyed while they continued members.* This was the substance of the contract, fairly entered into and ratified under the most solemn sanctions, after five year's experience. There was no grantor or assignee, and none was necessary. It was a partnership agreement among themselves, and was binding upon each individually who entered into it.

"If there be no principle of law opposed to such a community of property it must be held valid on the rules which apply to partnerships. There are no moral considerations opposed to it. In adopting it the Separatist Society followed the example found in the early history of the apostles, and which received an awful sanction of heaven. * * * * Upon a deliberate consideration of this case, I am brought to the conclusion that the complainants are not entitled to relief against the contract of their ancestor, entered into *bona fide* and for a valuable consideration. For the reason stated, I think the agreement entered into by the members, giving up their individual interest in the property for a common interest in the whole of it, so long as they shall

remain members, is not void in law; and, consequently, the bill of the complainants must be dismissed."

This decree was appealed from, and is reported as Goesele *et al.* vs. Bimeler *et al.*, 14 *Howard*, 590. It was there held, by the unanimous opinion of this court, that on the withdrawal or death of a member his individual connection with the society ceased, and that, as he had no ownership in the property, nothing was transmitted to his heirs. That the plaintiff in that case, who was the heir at law of Goesele, had no title whatever to the property of the society.

This court, *inter alia*, said:

"All individual right of property became merged in the general rights of the association. *He had no individual right and could transmit none to his heirs.* It is strange that the complainants should ask a partition through their ancestors when, by the terms of his contract, he could have no divisible interest. They who now enjoy the property enjoy it under his express contract.

"What is there in either of these articles that is contrary to good morals, or that is opposed to the policy of the laws? An association of individuals is formed under a religious influence who are in a destitute condition, having little to rely on for their support but their industry; and they agree to labor in common for the good of the society and a comfortable maintenance for each individual; and whatever should be acquired beyond this shall go to the common stock. This contract provides for every member of the community, in sickness and in health, and under whatsoever misfortune may occur. And this is equal to the independence and comforts ordinarily enjoyed.

"The ancestor of the complainants entered into the contract fairly and with full understanding of its conditions. The consideration of his comfortable maintenance under all circumstances was deemed

by him an adequate compensation for his labor and property contributed to the common stock. But it is not shown that Goesele or any other member contributed to the general fund with the exception of a small sum by Goesele, which, probably, could not have exceeded five dollars. The members of the association were poor and were unable to contribute anything but labor. In this way the land purchased by Bimeler was paid for.

"The complainants speak of the interest of their ancestor in the real and personal estate owned by the association, and their counsel contend that the articles did not divest him of either, but both descended to his heirs at law at his death.

"This argument does not seem to comprehend the principles of the association. Land and other property were to be acquired by the members, but they were not to be vested with the fee of the land. While they remained in the society, under its general regulations, the products of their labor on the land and otherwise were applied, so far as necessary, to their support. Beyond this they were to have no interest in the land or in the personal property. Many of the members were aged females; others from sickness or disease were unable to labor; but every one, whether able to labor or not, was provided for by the labor of the community. This was a benevolent scheme, and from its character might properly be denominated a charity. But from the nature of the association and the object to be attained, it is clear the individual members could have no rights to the property except its use under the restrictions imposed by the articles. The whole policy of the association was founded on the principles which excluded individual ownership. Such an ownership would defeat the great object in view by necessarily giving to the association a temporary character. If the interests of its members could be transferred or passed by descent, the maintenance of the community would be impossible. In the natural course of things, the ownership of the property in a few years by transfer and descent would pass out of the community into the hands of strangers, and thereby defeat the object in view.

"By disclaiming all individual ownership of the property acquired by their labor for the benefits

secured by the articles, the members gave durability to the fund accumulated and to the benevolent purposes to which it is applied. No legal objection is perceived to such a partnership. *If members separate themselves from the society their interest in the property ceases, and new members that may be admitted under the articles enjoy the advantages common to all.* * * * * It is said where a member is excommunicated or leaves the society he forfeits his right, and chancerry will not enforce a forfeiture. What is the extent of this forfeiture? It is the right to a support from the society. And this is certainly reasonable. Can a member expect to be supported by the society when he refuses to perform his part of the contract which entitles him to a support? He claims pay for his labor. He has been paid for this in pursuance of his own contract. In sickness and in health he has been clothed and fed and a home provided for him. But he claims the payment for property which he surrendered to the association at the time he became a member of it by signing the articles. The ownership of this property he relinquished to his associates as a part of the contract, and for the considerations named, all the payments for such property, and in the language of the articles signed, 'the individual abolished and abrogated for himself and his heirs. * * * * The surrender or giving up of the property was a part of the consideration on which the association stipulated to support him. It cannot be separated from that agreement. And it is clear, where the fault of not carrying out the contract is not attributable to the association, but to the member, he cannot have the aid of a court of chancery.'"

The Supreme Court of Ohio, in the case of Gasely *et al.* vs. Separatist Society, of Zoar, 13 *Ohio State*, 150, in 1862, took up and considered the agreements of that society and arrived at the same results as in the case just cited.

The Court of Appeals of the State of New York in the case of Burt vs. Oneida Community, 137 *New York*, 346, consid-

ered the articles of association on which the Oneida Community was organized, many of the provisions of which are substantially the same as those in reference to the Harmony Society.

In that case Burt, one of the members, was expelled, and he filed a bill asking to be reinstated, but the court held that the community had the right to expel a member, and that expulsion terminated his personal connection with the society, and all his rights to the use or enjoyment of the property of the society.

The Court said:

> "The plaintiff's grievance consists of the denial by the defendants of certain rights, which, he claims, he was entitled to as a member of the Oneida Community, an unincorporated association, first formed at Oneida, in this State, in the year 1848. His father was one of its founders, and the plaintiff, who was then four years of age, became provisionally a member of the community during his minority. Upon attaining his majority he formally assented to its article of covenant, and remained in its communion until the year 1880, when the controversy arose between him and his associates, which culminated in the commencement of this action January 12, 1884. It is not important to consider here the moral and religious teachings of the community, which were manifestly potent influences during the formative period of its existence. What principally concerns us now was its status as a business compact, and we must stop when we have construed the contract relation of the parties and determined the rights acquired by virtue of a membership therein.
>
> "In this aspect the main purpose of its promoters was evidently the propagandism of certain communistic views as to the acquisition and enjoyment of property, and the endeavor to put into practical operation an economic and industrial scheme which should embody and illustrate the doctrines which they held and inculcated. Necessarily the basic proposition of such a community was the absolute

and complete surrender of the separate and individual rights of property of the persons entering it; the abandonment of all purely selfish pursuits, and the investiture of the title to their property and the fruits of their industry in the common body, from which they could not afterward be severed or withdrawn except by unanimous consent. * * *

"Accepting the plaintiff's version of his conduct and declarations, we think it must be held that he renounced his obligations as a member of the community and severed his conventional relations with it. It cannot aid him that he attempted to reserve to himself the privilege of returning and resuming membership. The constitution of the community did not admit of the exercise of such an option: He could not withdraw when, in his judgment, such a course would be profitable and assert the right to come back and be received into the fellowship of the association when it suited his pleasure or convenience or self-interest to do it. The community had not made a unilateral bargain of that kind with him. He had not so far surrendered his freedom of action that he might not go out at any time without their assent; but in so doing he terminated his right to share in the enjoyment of the use and possession of the property of the concern. It is not correct to say that by his withdrawal from membership he forfeited his interest in the lands and chattels of the community. He forfeited nothing. The contingency or event upon which the existence of his estate in the property depended had happened. By the terms of the contract under which that estate was acquired its duration was only co-existent with the duration of his membership. * *

"It appears from the record that on October 16, 1880, a preliminary certificate for the incoporation of the defendant, the Oneida Community, limited, under the business companies act of 1875 (chapter 611), was executed by nine members of the community, including the property holders who held the deeds of its real property, and filed in the secretary of state's office. The objects of the proposed coporation were to carry on a general manufacturing and agricultural business, including all the different kinds of business in which the community was then engaged. The capital stock was $600,000,

which fairly represented the net value of its property, and the location of its principal business office was atthe home of the community in Madison county. The secretary of state issued to the proposed incorporators the license required by law. Books of subscription to its stock were opened, and such proceedings had that the entire capital was subscribed by the adult members of the community, about two hundred in number, in varying amounts, and the final certificate of incorporation filed November 20, 1880. On or before January 1, 1881, all the property of the former community belonging to it and held by its property holders was transferred to the corporation, and since that time has been owned and used by the corporation, which has carried on the different kinds of business theretofore undertaken by the unincorporated association, which has not, since January 1, 1881, been engaged in any business, and, so far as appears from the record, has not undertaken to discharge any of the obligations in its covenant with its members.

"The plaintiff insists that the association to which he belonged has thus committed an act of self-destruction, and has become dissolved, and he is, therefore, entitled to have its assets equitably administered and distributed, and to receive his proportionate share thereof. It may be that the old community has, by the act of its members, been dissolved. The referee held otherwise; the General Term refrained from expressing an opinion upon this point, and we do not consider it a material question upon this appeal. If it were sound as a proposition of law it would not help plaintiff. He had ceased to be a member of the community before the action was taken, and his property rights were not prejudiced by it."

In Waite vs. Merrill *et al.*, the Supreme Court of Maine, in 1826, in a case reported in 4th *Me.*, 90, considered the validity of the agreements of the Shaker Society. The case was most elaborately argued by eminent counsel and carefully considered.

In substance, the Shaker agreements coincided with the Harmony Society in the two important respects here considered:

(1) Each member surrendered all his individual property to the society and agreed to labor for it.

(2) Each member agreed that on his death or withdrawal, neither he or his heirs, executors or administrators should have any claim against the society or to any of its property.

It was further alleged that celibacy was a part of the pronounced policy of the society. The lower court charged, *inter alia:*

> "That there was nothing in the covenant itself inconsistent with law or morally wrong which would render it void; and that, therefore, however inconsistent with their own particular views of Christianity or religion, the faith of the Shakers, as developed in this cause might be, yet, if they were satisfied that the plaintiff knowingly signed the covenant, their verdict ought to be for the defendant."

The unanimous court sustained this ruling; and, in an opinion covering many pages considered and passed upon all of the objections urged, and held that the agreements were binding and obligatory upon all who knowingly signed them, and that there was nothing contrary to public policy or public morals in the same.

We ask for a careful consideration of the arguments and the opinion in that case.

The Supreme Court of Massachusetts, in the case of Grosvenor vs. the United Society of Believers, 118 *Mass.*,

78, also considered the agreements of that society. The case mainly turned on the right of expulsion, which that court sustained, and it especially confirmed the right of the ruling body to determine when the expulsion should be decreed, and that, when once expelled, the member forever forfeited all rights in the society, or to any of its property. Such rights could not thereafter be maintained, either by the member himself or by his heirs or legal representatives or executors.

MANNER IN WHICH THE PROPERTY OF THE SOCIETY IS HELD.

Prior to his death, in 1834, Frederick Rapp, a member of the society and the adopted son of George Rapp, had been its business agent for the purpose of transacting its external business. He was the party in whose name all contracts were made, all external business conducted, all property bought and sold. The deeds to him were in fee simple, to him and his heirs, without any designation of trust.

By a separate paper Frederick did declare that he held the property in trust for the Harmony Society, but this declaration of his was in no shape or form connected with the grants of real or personal property to him, but those grants vested in him an absolute, unqualified title in fee simple.

After the death of Frederick, in 1834, the then members of the Harmony Society, on July 5th, 1834, gave a power of attorney to George Rapp, constituting him the general agent of the society in place of Frederick Rapp, and gave to George

Rapp the additional power to appoint agents and substitutes under him. Four hundred and two persons then constituted the society, and George Rapp, on the same day, appointed Romelius L. Baker and Jacob Henrici as the agents under the power given to him. This power of attorney, signed by all these members, is as follow:

> "*Know All Men by These Presents:* WHEREAS, Frederick Rapp, of Economy, in Beaver county, State of Pennsylvania, recently deceased, was for a series of years the agent, in temporal affairs, of the Harmonie Society, carrying on in his own name all the external business of said society, and taking to himself the titles to real estate, as well as the evidence of claims arising out of the various transactions of said society;
>
> "AND, WHEREAS, by an instrument dated the 20th of July, 1825, under the hand and seal of said Frederick Rapp, he solemnly and irrevocably declared that all the property, real, personal and mixed, which then was or hereafter might be in his possession or enjoyment, or the title to which he then held or might hereafter hold, was and should be considered the property of the said society, in which he, the said Frederick, had no absolute interest whatever;
>
> "AND, WHEREAS, the lamented death of the said Frederick Rapp renders it indispensable that a new agent should be appointed, by whom the temporal affairs of the society may continue to be managed in a mode which has proved convenient and satisfactory;
>
> "NOW, THEREFORE, be it known, that we, the undersigned, constituting said Harmonie Society, so hereby nominate and appoint George Rapp, of Economy, in the county of Beaver, the general agent of said society in all its temporal affairs.
>
> "The powers intended to be conferred on the said George Rapp are hereby declared to be as follows, that is to say:
>
> "1. To ask for, demand and receive from each and every bank or other incorporated company, partnership, or individual person or persons, the amount which may be due therefrom, in the way of principal, interest or dividend, to the said Harmonie Society, or to Frederick Rapp, whether the same be

evidenced by judgment, mortgage, bond, certificate of stock, note, bill of exchange, deposit of money, book account, verbal promise, sale or barter, loan of money, or arise in any other manner whatsoever the check, order, receipt, acquittance or release of the said George Rapp to be as effectual as if executed by all and each of us, or as if it had been executed by the said Frederick Rapp in his lifetime.

"2. To execute and receive all deeds and conveyances, in fee simple or otherwise, on behalf of the society, whether the title thereto stand in the name of the society or of Frederick Rapp or of George Rapp and associates. The act of the said George Rapp relative thereto to be as valid and sufficient as if executed by us or by the said Frederick Rapp in his lifetime.

"3. To carry on, by himself or through the agents whom he is hereinafter authorized to appoint, all the dealings and traffic of said society of every description.

"4. To constitute and appoint an agent or agents under him as he may deem advisable, imparting to such substitute or substitutes, should he think fit, the whole or any portion of the authority hereby conferred on himself. He may also, at his pleasure, revoke such instrument of substitution whenever he may think such revocation called for by the interests of the society.

"5. It is distinctly understood that in accepting and acting under this power the said George Rapp disclaims all personal interest, other than that of a member of said society, in the present resources or future earnings of the society, in conformity with the principles and terms on which the Harmonie Society was orignally founded, as fully and effectually as was done by the late Frederick Rapp in the instrument already averted to, dated 20th July, 1825, the terms of which instrument the said George Rapp hereby adopts for himself and repeats in every particular.

"In witness whereof the undersigned, members of the Harmonie Society, who constitute said society, have hereunto set their hands and seals, at Economy, in Beaver county, this fifth day of July, in the year of our Lord eighteen hundred and thirty-four."

(Signatures.)

(Acknowledgment.)

"By virtue of the authority expressed in the fourth article of the foregoing power of attorney, I do appoint and substitute, in my place and stead, Romelius L. Baker and Jacob Henrici, of Economy, Beaver county, Pennsylvania, to act as general agents of the Harmonie Society aforesaid, jointly or severally in my name, and for the use of said society, to do and perform all acts and things which, as the general agent of said society, I am authorized to do. It being distinctly understood, however, that in accepting and performing the office and business of general agents of the said society the said R. L. Baker and Jacob Henrici shall neither acquire nor claim any personal interest in the present resources or future earnings of the said society other than that of a member of the said society, agreeably to the plans and terms of the association, but shall be considered as exercising the same trust mentioned in a declaration of trust signed by Frederick Rapp, on the 20th day of July, 1825, and referred to in the foregoing power of attorney to George Rapp.

"Witness my hand seal, this fifth day of July, A. D. eighteen hundred and thirty-four.

"GEORGE RAPP. [SEAL.]

"Signed, sealed and delivered in the presence of

"WM. ALLISON,

"JOHN NEELY."

(Acknowledgment.)

In 1847 the members of the society changed the mode of holding the property, and enacted the following:

They appointed two trustees

"for the exclusive management of the external business and affairs of the society."

These trustees were given the following powers:

"In their own names or that of either of them or otherwise to purchase and sell, deal, barter, exchange and traffic, make all contracts and bargains in the prosecution of the business. * * * * The said trustees shall have power jointly to *purchase* real estate in *their own names*, and also in their joint names to grant, bargain, sell and convey all or any

> of the lands and tenements now or hereafter owned by or belonging to the said society. * * * The powers hereby vested in the said trustees shall extend to and embrace all the property of said society, real, personal or mixed, whether standing or held in the name of the said Frederick Rapp or George Rapp, or in any other name or form whatsoever.
>
> "Article 6th. It is hereby distinctly and absolutely declared and provided that all the property, real, personal and mixed, which now or hereafter shall be held or acquired by any trustee or trustees, or persons under them, is and shall be deemed the common property of the said society."

Beginning with Frederick Rapp, the title to all the real estate has been conveyed to Frederick Rapp or George Rapp, or the trustees individually, and to their heirs, so as to vest an absolute fee simple title. The present writer cannot speak as to all the deeds to the trustees. There may be in some a trust for the society declared on the face, but the great body of the real estate which was originally conveyed to Frederick Rapp or to George Rapp or to the trustees was to the grantee individually and his heirs, vesting a fee simple, indefeasible title, without any trust whatever apparent upon the face of the deed.

The title which the society has to all its property is as follows:

A fee simple absolute in the grantee, Rapp, or the trustees as individuals, with a trust declared by the grantee for the use of the society.

The deeds conveying the property to Frederick Rapp when he was agent, or to Baker and Henrici when they were agents, or to the trustees after the agreement of 1847, are not in evidence. The whole tract of land at Economy was conveyed

by outside persons to either Rapp or subsequently the trustees as individuals, and unless it may be an occasional and exceptional case, to the grantee individually and his heirs, without any trust appearing in any way in the purchase from the outsider. As between the grantor and grantee, there was no limitation whatever of the estate granted. It was an absolute fee simple. It was not to or for any particular purpose or for any particular time or upon any condition of any kind. It was an absolute unconditional conveyance in fee simple.

As between the grantee and the Harmony Society, there was a declaration of trust in favor of the society, but this in no way limited or interfered with or lessened the estate which the grantee took in fee simple. It simply said as between the society and the grantee, this absolute fee simple I hold for your use.

This being so, there can here be no question whatever of a *base* fee, or a resulting trust or perpetuity or want of proper parties as grantees. If there was it would defeat the plaintiffs' right as well as our own, for they only pray to share in the property the society owns.

BASE FEE—RESULTING TRUST—WANT OF PROPER GRANTEES—PERPETUITY.

It is, however, claimed that the estates granted under the different agreements by the individual members to Rapp and his associates are faulty because they are alleged to be:

(*a*) Merely the creation of an estate during the lifetime of the society as such, and therefore but a base or conditional fee.

(*b*) That a trust resulted in favor of the different individual members, so that, after the dissolution of the society, the property each individually conveyed to Rapp and his associates reverted to each.

(*c*) That the pretended grants under the agreements were severally void, because of want of proper persons as grantees; that a mere unincorporated association cannot be grantee.

(*d*) The conveyances under the agreements violate the rule against perpetuities, and are, therefore, void.

As the master has found, and the fact is, that no one of the plaintiffs or their ancestors ever did convey *any property whatever*, real or personal, to the society, it is not easy to see how any of these plaintiffs can be benefited by a conclusion sustaining any one of these four propositions. If one or all are true, the plaintiffs would not thereby derive one cent of benefit.

If the society only took a *base* fee, and the estate terminated when the society ended, the property reverted to the grantors, and no one of the plaintiffs, and no one of their ancestors ever was a grantor.

If the property of the society is only for a defined purpose, so that there exist resulting trusts when the purpose is fulfilled, still it is the grantors to whom the trusts result, and not any one of the plaintiffs.

If the society took no title whatever because of want of proper grantees, still it is the grantors who will retake the property and not the plaintiffs.

If the conveyancer under the agreements violates the rule as to perpetuities, still it is the grantors who benefit, and not the plaintiffs.

We are not, however, unwilling to discuss, but really anxious to have these questions settled, and we, therefore, consider them as involved in the case.

A *base fee* is where the estate is conveyed only until the happening of a certain event, which event, when it happens, will determine the estate. Thus a grant to *A* and his heirs until *B* returns from Rome is a base fee, and when *B* returns from Rome the estate is determined.

1st *Washburn on Real Property*, p. 94.

See cases cited by the master (Record, pp. 96 and 97).

The condition or limitation in a base fee must always be clearly expressed.

Methodist Church vs. Old Columbia, 103 *Pa.*, 608.

Such an estate, therefore, is not an absolute parting by the grantor with all his interest in the thing granted, but leaves an estate in him which is carved out of the entire fee simple estate which he owned in the property at the time of the conveyance.

Lord Hardwick defines three classes of *resulting* trusts as follows:

1st. Where the estate is purchased in the name of one, but the money is paid by another.

2nd. Where the trust is declared in part only, the residue remaining undisposed of.

3rd. In certain cases of fraud.

Lloyd vs. Spillet, 2nd *Atk.*, 148–150.

Any substantial consideration paid by the grantee would be sufficient to repel the presumption of a resulting trust.

2nd *Washburn on Real Property*, 504, 505.

> "If the conveyance has been made upon a valuable consideration there can be no resulting trust to the grantor, as the payment of a valuable consideration imparts an intention to benefit the grantee in case that the trust declared fail or are imperfectly declared, or do not take, or for any other reason."

1st Perry on Trusts, sec. 151, and cases cited.

See also sections 152-153.

To create a base or conditional fee or a resulting trust, it is evident in the cases, other than of fraud, that the grantor has reserved to himself, either expressly or by necessary implication, an estate in the thing granted, which, on the happening of a certain contingency, will ripen into possession.

Now, did the members who joined the Harmony Society and signed the agreements conveying their property to Rapp and his associates intend to grant only a conditional estate in the thing granted and reserve to themselves a usufruct to ripen into an actual beneficial estate on the happening of a certain contingency, to wit: the termination of the society.

These questions are answered by the words of the agreement.

Read Article 1 of the agreement of 1805.

Read Article 1 of the agreement of 1827.

Read Articles 2 and 3 of the agreement of 1836.

Here is an absolute, unqualified, definite grant. No use is stated, or hinted at, except the use of the grantees put in all deeds. No estate in reversion ever imagined. No contingency upon which the donor might again regain his property even hinted at. The donor parts absolutely with his estate, absolutely and unqualifiedly, without any reversion.

In the language of the agreement of 1805 it is—

> "all our estate and property."

And it is:

> "as a free gift or donation."

Binds himself:

> "as well as on the part of our heirs and descendants, to make free renunciation thereof, and leave the same at the disposal of the superintendents of the community, *as if we never had nor possessed it.*"

The agreement of 1827:

The language is:

> "do hereby give, grant and forever convey to the said George Rapp and his associates, and *their heirs and assigns*,"
>
> "all our property, real, personal and mixed, whether it be lands and tenements, goods and chattels, money or debts due to us, jointly or severally."

Now, note:

> "in possession or in *remainder*, or in *reversion*, or in *expectancy*, whatsoever or wheresoever, without evasion, qualification or reserve."
>
> "as a free gift or donation."
>
> "And we do hereby bind ourselves, our *heirs*, executors and administrators, to all such other acts as may be necessary to vest a *perfect title* to the same

in the said association, and to place the said property at the *full disposal* of the superintendents of the said community without delay."

Could there be a more absolute, unqualified parting with all title to the property conveyed than this?

It names, as if to exclude the idea of a reversion or a resulting trust,

"in reversion or in expectancy."

It binds himself and heirs to make

"a *perfect title* to the same in the said association."

Not a base fee or a limited trust, but a *perfect title.*

There is no limitation of the uses to which the property might be put.

"For the benefit and use of the said association or community."

Just as our deeds convey to and for the use of the grantee.

No limit to the use.

And then, this is to be a *perfect title*, so that it may be

"at the *full disposal* of the superintendents."

How could it be a *perfect title*, and at such full disposal, if George Rapp and his heirs only got a "base fee," or if the estate was only to endure so long as the society had a "patriarch," or practiced "celibacy," or preached "the second advent?"

Then, the agreement of 1836:

It denounces the idea of "*restoration of property*," as being of "pernicious tendency," and because it would be impossible to enforce it fairly.

It declares that—

> "all the property of the society, real, personal and mixed, in law or equity, and howsoever contributed, or acquired, shall be deemed now and *forever* 'joint and indivisible stock.'"

> "Each individual is to be considered to have *finally* and *irrevocably* parted with all his former contributions, whether in lands, goods, money or labor, and the same rule shall apply to all future contributions whatever they may be."

> "*Finally and irrevocably parted.*"

Under this language how can one talk of reserving an interest in the thing granted!

Section 3:

> "3d. Should any individual withdraw from the society, or depart this life, neither he, in the one case, nor his representatives in the other, shall be entitled to demand an account of said contributions, whether in land, goods, money or labor, or to claim anything from the society as matter of right. But it shall be left altogether to the discretion of the superintendent, to decide whether any, and if any, what allowance shall be made to such member, or his representatives as a donation."

There is, then, in all these articles a marked and expressed intent that the donor parted with all his estate, and neither he nor his heirs, at any time, were to have any claim, or title, or right of any kind to any part of it.

The title granted was to be, and was a *fee simple absolute.*

No matter what happened in the future, or who it went to in the end, the donor could not follow it.

Here is *the marked difference* between our case and such cases as

Cunnach vs. Edwards, 13 *Repts.* (ch) 334.

See also opinion of Greer, J., cited *ante* in Nachtrieb case, the difference between a charitable organization and the Harmony Society. The former receives contributions to give away. The members of the latter accumulate by work and trade for their own joint benefit and use.

See as to ownership—

Brown vs. Dale, 9 *Chancery Div.* (L. R.), 78.

Each one of these agreements, 1805, 1821 and 1827, contain a valuable consideration moving from Rapp and his associates, the grantees, to the joining member. Rapp and his associates promise the joining member to support him and his family in sickness and in health, and to clothe, feed and provide for him during his and their whole life, provided he and they so long remain with the society. They promise him in addition the benefits of school and of church, and they adopt him as a member of the society. He, the joining member, parts with his individual property to have, with others, a joint interest in the common property, and this common property, under the articles of agreement, is pledged to him for the performance by Rapp and his associates of all their covenants to support and maintain and school and clothe and feed him and take care of him in sickness and in health.

Thus, under the authorities cited *ante*, there cannot be any *resulting trust.* The agreements not only negative the

intent of a resulting trust, but the valuable consideration forbids it also.

So, too, a glance at the purpose of these agreements and the working out of their covenants forbids any idea of a resulting trust or a base fee.

The property of each joining member is given to Rapp and his associates in fee simple, as we have seen, and are at the full disposal of the superintendents of the community, so that a full and absolute title to the same can be made by its sale or purchase.

From 1805 down until this date the society has largely engaged in all kinds of trade and commerce. They have built and run glass mills and iron mills and saw mills, made silk, worked cotton, ran dairies, made whiskey, made beer, built railroads, were in the oil business, in the coal business—indeed, covered almost all the branches of industry in Western Pennsylvania; and from these enterprises, as the master's report shows, probably nine-tenths of the acquisitions of the society arose. The means of engaging in these enterprises primarily were from the labor of the individuals composing the society, on the property of the society, and the raising and sale of all kinds of products of the soil.

How is it possible from these facts to dream of a conditional or partial estate only vested in Rapp and his associates, which, on the termination of the society, is to revert to the grantors?

PROPER GRANTEES.

It is claimed that the society did not take a good title under the agreements, because a voluntary unincorporated association cannot be the grantee; but this rule, it is apparent, has no application to the facts of this case.

The agreement of 1805 is made between

> "the subscribers of the one part, and George Rapp and his associates of the other part."

Here the George Rapp is a well known person, and his associates are defined by the persons who signed the agreement of 1805, so that there is no uncertainty as to grantees. Even if they did not thus designate themselves, it was a mere question of fact as to who the associates of George Rapp were, and the grant then would be to Rapp and those associates thus defined.

The covenants are not only by the subscribers to Rapp and his associates, but Rapp and his associates also covenant with the subscriber.

The agreement of 1821 is also between certain persons of the one part,

> "and George Rapp and his associates of the other part."

This speaks of the association as a defined community already in existence; and the desire of other persons to join; and George Rapp and his associates forming the association are the grantees in the covenants, and are also the grantors in other covenants for support and maintenance to the joining member.

The agreement of 1827 alleges that:

> "An association or community has been formed by George Rapp and many others,"

based on certain propositions, and then follows:

> "And, whereas, it is necessary to the good order and well being of said association that the condition of membership should be clearly understood, and that the rights and privileges and duties of every individual therein should be so defined as to prevent mistake or disappointment on the one hand, and contention or disagreement on the other."

Therefore, that agreement was made, and it is between the individual of the one part, and

> "with the said George Rapp and his associates"

of the other part.

The grant is to George Rapp and his associates and their heirs and assigns, and George Rapp and his associates covenant to and with the individual for his support and maintenance. All the members in 1827 signed that agreement, and therefore the associates of George Rapp were known and defined by the very agreement through and by means of which the individual conveys his property and becomes a member of the association.

The grantees are, therefore, well defined and known persons.

See also supra, pages 217 & 223.

PERPETUITIES.

The rule of law is that lands cannot be limited in any mode so as to lock them up from alienation beyond the period of a life or lives in being and twenty-one years.

This court defined it in Auld vs. the Washington Hospital, 95 *U. S.*, 312, as follows:

> "A limitation of property which renders it inalienable beyond the period allowed by law. That period is the life or lives in being and twenty-one years more."
>
> *1st Washburn on Real Property*, 115.

In Pulitzer vs. Livingston, 89 *Maine*, 359, the question is most elaborately considered and numerous authorities quoted. The conclusion reached is that if the estate is vested, and the persons in whom it vests may freely sell, the rule does not apply.

It is the *locking up* of the property that is forbidden; the limiting the grant so that the grantee cannot at any time within the prohibited period sell the property.

Instead of any of the agreements of the Harmony Society locking up the property so that it could not be sold, they are full of the idea of the free alienation of the property by the agent, Frederick Rapp, and then Henrici and Baker, the sub-agents under George Rapp, and then the trustees under the agreement of 1847.

In the most explicit manner, the powers creating the agents, as see *ante*, the power of attorney to George Rapp gave the fullest authority to sell all the property, real and personal, by the agent.

The agreement of 1847 in a still more pronounced manner gave such powers to the trustees. They were authorized

> "in their own names or that of either of them, or otherwise, to purchase and sell, deal, barter, exchange and traffic, make all contracts and terms in the prosecution of the business. * * * * The said trustees shall have power jointly to purchase real estate in their own names, and also in their joint names to grant, bargain, sell and convey all or any of the lands and tenements now or hereafter owned by or belonging to the said society, and for this purpose to execute deeds of conveyance in fee simple or otherwise in their joint names." * * *

Instead of the Harmony Society locking up real estate from alienation, these agreements and appointments of agents, and especially the agreement of 1847, in the broadest and most liberal and unrestricted manner gave to the agents and trustees the power at any time to sell and convey. There is not only this affirmative grant of power, but there is also an absolute negation on the face of each of these agreements of any idea of restriction of alienation.

The trust in favor of the society is for the joint benefit of all of the members of the society, *while* members and *as* members. It is a trust which the members may at any time terminate. It does not pretend to be indestructible. As the society is composed of its live members at any one time, they may, whenever they choose, terminate the trust, dispose of and change the trustees or sell the property, and this power of theirs is totally prohibitory of the fundamental idea of a perpetuity, *i. e.*, that property is tied or locked up and prevented from being alienated.

All of these questions have been considered and passed upon by this court in the Goesele vs. Bimeler case; by the Supreme Court of Maine and of Massachusetts, and by the Circuit Court of the United States in the cases hereinbefore cited, and all have denied the propositions of the appellants we are now considering.

We especially call attention to the language of this court in the Goesele vs. Bimeler case, 14th *Howard*, p. 609, denying the proposition as to a perpetuity.

The question there, in the opinion of the court, is tersely stated thus:

> "Do the articles constitute a perpetuity? We all think they do not."

See, also, the consideration of these questions in the master's report, and especially his citation of authorities as to the certainty of the grantees and the power of an unincorporated association to take a grant. (Record, pp. 90 to 94.)

SOCIETY AGAINST PUBLIC POLICY.

In the Nachtrieb case, heretofore considered, and as reported in 3d Wallace, Jr., as we have seen, it is said that the morals of the society were unquestioned; vice and immorality were strictly prohibited and punished. During all its existence up to that time, not one of the members of the society had ever been charged with a crime.

The bill also alleges:

Paragraph 8:

> "That the Harmony Society, from the period of its inception until a recent date, adhered rigidly to its plan of government and became illustrious and highly respected by reason of its sincere advocacy of the equality of man, its espousal of the highest principles of Christianity, and its honesty and benevolent administration of all public functions, whether in the management of its internal affairs or in its many transactions with the citizens of Western Pennsylvania."

It seems incredible that a society whose impress upon the public is so favorable should be forbidden by law. Without a single member ever charged with a crime, with its "sincere advocacy of the equality of man, its espousal of the highest principles of Christianity," and "its honest and benevolent administration of all public functions," how could it at the same time be the hideous organization our opponents now allege.

Nowhere in any of the agreements will any clause be found advocating celibacy or forbidding marriage. True, to a great extent celibacy was practiced and believed in, but this was

the voluntary action of each member. Each might at any time leave the society and contract marriage if he chose.

Without elaborating, we refer to the cases we have cited as fully meeting and overruling this ground of objection.

The Supreme Court of Pennsylvania, in Schrieber vs. Rapp, 5 *Watts*, 360, affirmed the court below, which held that

> "there is nothing in the articles of association given in evidence that renders the agreement unlawful or void; nothing in them inconsistent with constitutional rights, moral precepts or public policy."

In Goesele vs. Bimeler, 5 *McLean*, 230, affirmed by this court in 14th *Howard*, Judge McLean said:

> "That in the absence of all fraud and unfairness this was a *bona fide* and legal contract cannot be doubted."

The Supreme Court of Maine, which elaborately considered this point in Waite vs. Merrill, 4 *Maine*, 90.

The Supreme Court of Ohio, in Gaely vs. Separatist Society, 13 *Ohio St.*, 150.

If this objection to the Harmony Society could be sustained, what possible good could it do the appellants, and how can they possibly raise it? Their ancestors, through whom they claim, signed the agreements and were members of this obnoxious community. How can those ancestors or those claiming through them condemn their own agreements

and their own community and seek equitable relief on that ground?

See also supra pages 226 - 227.

BRIEF CONSIDERATION OF THE NATURE OF HARMONY SOCIETY.

But why may not individuals join together for mutual benefits and agree to submit to and be governed by certain of their own numbers, so far as their property or conduct comes within the scope of the joint agreement? Is it not a usual provision in all partnership articles, and does it not inhere in every corporate organization? And what fundamental law is there which forbids the governing board to fill vacancies in its own numbers, always, however, out of the membership in the society?

It is noticeable that these agreements of the Harmony Society do not establish as a condition of membership any particular system of belief. Protestants and Catholics and even infidels have from time to time belonged to it. There was no test oath or pledge, and while Christian fellowship was the foundation of the society, and to fulfill the will of God the desire of its members, here all men, Jew and Gentile, Infidel and Christian, could unite.

And just as there was no test oath or pledge as to religious belief, so there was no attempt to control the liberty of the individual. At any time he might leave the society.

Under the agreement of 1827 it was the patriarchal form of government, and the bill alleges (paragraph 1):

> "The members of said society obeyed said George Rapp as their spiritual and temporal leader and ruler. The only laws or rules of governing said society were made by him, the members thereof having no voice in their enactment."

This patriarchal form of government modified in 1847, but still a patriarchal form, where nine members of the society were chosen as the patriarchs, continued until this bill was filed in 1894, and during all that period the bill alleges (paragraph 8th):

> "That the Harmony Society, from the period of its inception until a recent date (1890) adhered rigidly to its plan of government and became *illustrious and highly respected by reason of its sincere advocacy of the equality of man*, its espousal of the highest principles of Christianity, and its *honesty and benevolent administration of all public functions, whether in the management of its internal affairs or in its many transactions with the citizens of Pennsylvania.*"

The voluntary practice of celibacy has been from the period of Christ. The negation of the yearnings of the flesh; the dedication to God of all one's person and energies; the idealization of life until the atmosphere one lives in is seraphic and angelic, to all these practices and belief, thousands have, thousands do, dedicate themselves. Heretofore poetry and music and song *in excelcis* praised these devotees. No written law forbade them; no decision of the court so held the unwritten law to be. It would be a new thing under the sun in our free country where one's conscience is the sole judge of his religious belief to condemn as contrary to the policy of our laws so good, so pure, so beneficial and helpful an association as the Harmony Society.

THE PROPERTY IS NOT HELD FOR A CHARITABLE USE.

In the seventh assignment of error the appellants allege that the society was not organized "for any religious, scientific, charitable or literary purpose," and to this we agree.

(1) The property now sought to be divided is in a small sense the gift of any one, but, on the contrary, is the result and accumulation of years of labor and trade.

A charity necessarily implies a gift or bounty.

Bispham's Equity, sec. 123 (4th Edition.)

(2) The agreements under which the property is accumulated adopt each contributor as a member, and by mutual and dependent covenants the adopted member agrees to work, and in consideration thereof he is to be fed, clothed, housed, etc., so long as he remains in the society.

There is, therefore, no distribution of property, but a *quid pro quo*. The property is not accumulated for a charity, but for the persons who compose the community.

See Grier, J., opinion, Nachtrieb's case, 3 Wallace, Jr.

What the member gets is a consideration to him for his labor, etc.

Kain vs. Gibboney, 101 *U. S.*, 362.
Corks vs. Manners, *L. R. 12 Eq.*, 574.
Jackson vs. Phillips, 14 *Allen*, 539.
Swift's Extrs. vs. Beneficial Society 73 *Pa.*, 362.
Marsden on Perpetuities, page 298.

(3) The only persons interested in the property, or to receive benefit therefrom, are those who are members of the society and who sign the written agreement, and thus they take, not as charitable recipients, but as worthy members of the Harmony Society.

Bispham's Equity, sec. 124.
Perry on Trusts, sec. 697.
Babb vs. Reed, 5 *Rawle*, 151.
Swift's Executors vs. Beneficial Society, 73 *Pa.*, 362.
Goesele vs. Bimeler, 14 *Howard*, 229, 230.
Schrieber vs. Rapp, 5 *Watts*, 351.
Nächtrieb vs. Harmony Society, 3 *Wallace, Jr.*, 66.
Spiedel vs. Harmony Society, 120 *U. S.*, 377.

The conclusion is plain and undoubted.

No one of the appellants ever had or has now, or would have if the Harmony Society was dissolved, any right *whatever* to participate in the distribution of the society's property.

The members who at any one time comprise the society may distribute among themselves all the property of the society; of course, providing for payment of debts.

No one else than these members, at any time or in any contingency whatever, may participate in the distribution of its property.

NATURE OF THE TITLE THE TRUSTEES AND MEMBERS OF THE SOCIETY HAVE.

The original deeds for the property of the society were all made in fee simple to Frederick Rapp and his heirs.

In no instance was there any trust or use declared on the face of the deed. The title was absolute and unqualified in Frederick Rapp.

Frederick Rapp, as we have stated, did declare that he held the property in trust for the society by a separate paper.

All the other conveyances to George Rapp, who suceeeded Frederick Rapp as the agent, and then to the different trustees appointed under the agreement of 1847, gave an absolute title, in fee simple, and without any trust declared.

The title to all the real estate is conveyed to the trustees in fee simple. It is, in each instance, an absolute unqualified estate in fee, without limitation of any kind. It is not conveyed upon any condition of any kind. No one of the members of the Harmony Society ever conveyed, so far as this case shows, any real estate to the society, but, if any one did, it was just as absolute a conveyance, as shown by our analysis of the different agreements.

The grantors of all the real estate parted with all their title to the tracts of land conveyed. They were conveyed to the trustees and their heirs, or to Rapp and his associates and their heirs.

It is true that, beginning with the original declaration of Frederick Rapp, in 1834 (Record, vol. 4, p. 619), followed by George Rapp's appointment in 1834 (Record, vol. 4, p. 613), and this by the agreement of 1847 (see page 312, appendix to this brief), the agent and trustees in each instance declared that the property conveyed to them

> "is and shall be deemed the common property of said society."

The

> "*said* society"

as the agreements all show, were the persons who were in membership and constituted part of it.

McKennan, C. Judge, in the Speidel case, 15 *Fed. Repts.*, 753, speaking of what this trust was, and for whom, said:

> "The trust alleged here was *instituted for the equal and exclusive benefit of the members of the Harmony Society.* It was part of the religious as well as secular policy of the society. *Fellowship in the society was the only recognized title to participation in its benefits. When that fellowship ceased, from whatever cause, all further interest in the trust and all the privileges of membership were necessarily lost and were denied.*"

Mr. Justice Gray, in the same case, said (120 *U. S.*, 377):

> "The trust on which Rapp and the defendants (the trustees) as his successors held the common fund of the Harmony Society is described, in one place in the bill, as for the members of said families, and the contributors of said fund, and for their common benefit, that is to say, as is clearly explained by what goes before, in trust for their common benefit *as a community*, living together *in the community*, working for the community, subject to the regulations of the community and supported by the community."

The Harmony Society, composed of those who at the time were its members, were the *cestui que trustents* of the trustees, in whom stood the absolute fee simple legal title to the property. Each one of these members, so long as, *and only so long as*, he was a member was one of the *cestui que trustents*. Whenever he ceased to be a member the *use* shifted from and left him, *because* the very foundation and condition of its existence were taken away. When one became a member of the society, the *use* for him sprang up so as to include him among the members. When he ceased to be a member the very agreement he signed, by which he became a member, terminated and ended the trust or use.

In 2 *Washburn on Real Property*, page 669 (fifth edition), title "Shifting Uses," he uses, as an illustration of them, as follows:

> "An example of a shifting use, as given by the courts, is a grant to incorporated proprietors of land on which it was intended to build a church, *habendum* to said proprietors, etc.; and to each and every person who may hereafter become the lawful owner and proprietor of a pew in said house to be built thereon by said proprietors, the use would legally shift to those who should thereafterwards become pew holders."

In the society's agreement of 1847 provision is made for the admission of future members by the Board of Elders. (See Article III., page 310, of this brief.)

Under the original agreements, always, by consent of all the members, new members could be admitted.

To the trustees, say a parcel of land is conveyed on April 1st, 1870; they hold the same in trust for the members of the society as such, so long as each continues to be a member.

Each member was and is a *cestui que trust.* As a part of and a member in this society each had such a title as would enable him to compel the use of the real estate for the purposes of the society and the fulfillment of the covenants contained in the written agreements of all the members.

When a new member came in, a use sprang up for him, and he became, so long as he was a member, one of the *cestui que trusts.*

When any one left the society and thereafter ceased to be a member of it, the use or trust he had shifted from him to his fellow-members of the society. As Judge McKennan says *ante* the trust was

> "for the equal and exclusive benefit of the members of the Harmony Society."

As Judge Gray, in the same case, said, *ante:*

> "in trust for their common benefit as a community, living together in the community."

See, also, *Kerr on Real Property*, vol. 2, sections 1662, 1663.

Quite an instructive case is that of Second Congregational Society vs. Waring *et al.*, 24 *Pickering*, 304, which was again considered in the case of Packard vs. Ames, 16 *Gray's Reports*, 328.

The opinion in the latter case is short, and we quote it as follows:

> "BIGELOW, C. J. The construction of the deed from Joseph S. Packard to Micha Packard and others, proprietors, was considered by this court in North Bridgewater Congregational Society vs. Waring, 24 *Pick.*, 304. It was there held that an estate in fee,

vested in the grantees to the use of the proprietors of pews therein designated, the use shifting to such as should thereafterward become pew-holders. No intimation was there made that the conveyance was on a condition subsequent. Nor, on careful consideration of the terms of the grant, can we see any valid ground for holding that such is the true interpretation of the deed. There are no apt or proper words to create a condition; there is no clause of reentry or forfeiture. The only words which bear any semblance of an intent to restrict the title conveyed by the deed are found in the habendum. These are merely that the grantees, the proprietors of pews, should hold the estate for the purpose of erecting and maintaining thereon a house for public worship. But we know of no authority by which a grant declared to be for a special purpose, without other words, can be held to be on a condition. On the contrary, it has always been held that such a grant does not convey a conditional estate, unless coupled with a clause for the payment of money or the doing of some act by the grantee, on which the grant is clearly made to depend. Without some such clause a grant for a specific purpose can be held at most only to create a trust, but not an estate on condition. *Co. Lit.*, 203a, 204a, 204b, 214b. *Shep. Touchst.*, 123, 124, 133; Cowper vs. Andrews, *Hob.*, 41; Norfolk's Case, *Dyer*, 138b. Exceptions sustained."

The Supreme Court of Pennsylvania in Methodist Church vs. Old Columbia Co., 103 *Penna. St.*, 614, cites and approves this case.

Survivorship in a joint estate exists in Pennsylvania wherever the parties so provide either by express words or by fair implication from the words used.

Jones vs. Cable, 114 *Penna. St.*, 586.
Arnold vs. Jack, 24 *Penna. St.*, 60.

In each of these articles we have considered, in plain words, the member who leaves or who dies loses all his right of membership and all his joint rights with the other members to the society's property. Or perhaps it is more correct to say that his estate is necessarily limited to the period of his connection with the society—and when he dies or leaves this estate terminates. It ends and the common property *theretofore* owned by say the thirty members who constituted the society now is absolutely owned by the twenty-nine members who at present constitute it.

SECOND QUESTION.

HAS THE HARMONY SOCIETY BEEN DISSOLVED?

The master and the court below answered this question in the negative. The society is not dissolved. It is just as truly a society to-day as it was in 1827, or 1836, or 1847. The agreements do not provide for any certain number of members to make a society, and seven is as good as seventy for that purpose.

There is a peculiar burden upon the appellants to induce this court to reverse such finding of facts as above referred to. The master went at great detail into all the evidence and found against the dissolution. So did the Circuit Court below, when it affirmed the master's findings. So did the Circuit Court of Appeals when it affirmed the same findings.

Surely to reverse *both* a master *and* the two courts below would require a *palpably plain* case of error on their part.

But this court, if it examines the evidence, will be struck with the barrenness of it to prove a dissolution. It, indeed, proves just the contrary.

Restating the question it is as follows:

(II.) Has the Harmony Society been dissolved

(*a*) By mutual consent of its members, or

(*b*) By the abandonment of the purposes for which it was formed?

When the plaintiffs began to take testimony in the court below it was before an examiner who had not the power to rule on questions of evidence. Counsel differed widely on what was admissible, and eventually both sides submitted to the Circuit Judge Acheson, who wrote out an order defining the limits of the testimony, among other things to the proof of the alleged dissolution of the society either

(*a*) By the common consent of its members, or

(*b*) By the abandonment of the purposes for which it was founded.

We therefore inquire:

(*a*) Has it been dissolved by mutual consent of its members?

The bill alleges this, paragraph 26; the answer denies it. The burden is on the plaintiff to prove it.

The master and the courts below found against it.

There is not one particle of proof to sustain it. No witness testifies to it.

On the contrary, there is proof that it is in full life; that it now exists as it has for over seventy years; that it differs only in those things where time and new discoveries and inventions have worked changes in all our modes of life. The steam railroad, the telephone, natural gas, etc., have necessarily worked changes in all our lives—less in them at Economy than elsewhere. A society with ten or twelve men, or less, could not work the farms, or keep open the shops, etc., as if it had fifty or one hundred men.

(*b*)—Has the society abandoned the purposes for which it was organized, and thereby become dissolved?

It will be noticed this requires an examination *in limine* of

(1) What were and are the purposes for which the society was organized?

(2) What would constitute such an abandonment as would work a dissolution of the society?

(1) What were and are the purposes for which the society was organized?

The answer to this is found in the agreements of 1805, 1821, 1827 and 1836. There and *only* there are the purposes for which the society was formed definitely and affirmatively stated. The main object and purpose was the accumulation of property by the society and the bodily support and maintenance of all its members and their families, and this was to be accomplished by the labor of their hands and the use of the joint property. All the four agreements emphasize this, all the covenants bear upon it. The surrender of individual property and the labor of the individual were the consideration for the society promising his support and maintenance. The joint property was the means of insuring this.

So far as regards the rights of property, the interest each had in the common fund, and the rights of the society to that fund—these articles minutely and carefully regulate them, and it was their chief and main purpose so to do.

It seems clear that one of the purposes of the society in the acquisition, possession and use of property was to enable it to fully perform its covenants with the individual for his support, education and maintenance.

The society also intended to accumulate property the disposition of which rested solely in the discretion of the society. Thus all the agreements are specific in two respects:

(*a*) Each member adds his individual property to the joint property of the society.

(*b*) Each member covenants to labor with his own hands and those of his family, under the direction of the superintendents, for the benefit of the society.

Thus the accumulation of property was provided for and this accumulation pledged for the maintenance of each member, but what use the members as a whole would make of the corpus of the property, or how or when sell it or divide it was left to its owners, *i. e.*, all the living members at any one time who constituted the society.

As the preface to the agreement of 1827 shows, the members were to live in Christian fellowship, and the chief object of the whole community was the fulfillment of the will of God.

The object this and all other societies seek is to approximate to the fulfillment of the will of God, and this is to be accomplished by the exercise of those affections and the practice of those virtues which are essential to the happiness of man in time and eternity.

What are those *affections and virtues?*

They are not specified.

No special form of religious belief is prescribed (nor was any declaration of faith ever required for admission to membership).

The most that can be definitely said is they are those not inconsistent with Christian fellowship, as derived from the Holy Scriptures, and the practice of which tend to the fulfillment of the will of God.

Patriarchal government and community of property only are defined.

Taking the agreement of 1827 as a whole, it founded the society for the accumulation of property which was to be owned in common, *i. e.*, community of goods, and gave it the patriarchal form of government, and the members were to practice the affections and virtues growing out of Christian fellowship, and which tended to the good of the members in time and eternity.

The society was not a church or religious organization, but a community of kindly fellowship, having all property in common, and governed by a patriarch, whose will was the supreme law; and the affirmation of approximating to the fulfillment of the will of God by the practice of virtues and affections which tended to the eternal and temporal happiness of the members was a broad, general assertion, not to or for any form of worship, but as a rule for daily life.

Two of the principles are enumerated.

The Patriarchal Government, when George Rapp was the sole patriarch, which was changed by the agreement of 1847, when George Rapp died.

Community of property, as in the days of the apostles.

This is still unchanged. It necessarily subordinates the individual to the society, and, as the subsequent portions of the agreement of 1827 show, gave him no separate individual interest in the common mass which he could sell or transfer, and yet gave him, in one sense, a lien on the whole mass of property to insure his support and maintenance.

It was left for the patriarchal government, succeeded by the Board of Elders, from time to time, to take such action as might be deemed necessary or be deemed expedient to repress practices violating the rule of Christian fellowship and to suggest others which might tend to its practical triumph.

The agreement of 1847, besides giving to the Board of Elders the entire internal management of the Harmony Society, expressly gave it the power

> "to establish regulations for the maintenance and improvement of the morals of the society."

One of the incidents of the communism of property, as adopted in the days of the apostles, was that to each was given out of the common fund as he had need. The communism adopted by the Harmony Society, therefore, included the temporal support out of the common fund.

This support and maintenance was one of the *main purposes* of the society.

Unless the body was kept, nourished and maintained, and the mind fed and enlightened by teaching, neither temporal nor eternal happiness was possible. And yet, to do this, it was necessary to use the common property.

It would then be safe to conclude that the main and chief purposes of the Harmony Society were the accumulation of property and the bodily and temporal support, nourishment and education of each of its members.

The Harmony Socieey is not a religious organization or church.

The church, in its popular sense, was founded to propagate and preserve the religion of Christ, and whatever may be its sub-divisions, it prescribes the worship of Christ and God, and exists for that.

Religion is the recognition of God as an object of worship, and this may appear or exist in all the forms of worship which the varying beliefs of ages have created.

But to be a religious body, or a church, is necessarily to exist primarily for the worship of God by some set ceremonial and service.

This is the prime, and, indeed, the sole purpose, of the religious body, and the Mortmain statutes were passed to prevent vast quantities of property being tied up to further certain religious propaganda.

Now, the agreement of 1827 does not adopt any religion, or prescribe a form for the worship of God, or state that as its purpose. Its main purpose was to secure the maintenance and support of its members—not to determine upon some form of religious belief, and organize for its propagation and preservation.

All human government is an approximation to the fulfillment of the will of God. But no human government is considered as a religious body or a church.

The fact, then, that the fulfillment of the will of God is an object of this society, should not blind or mislead one to its main purposes, which were, as the details of its agreement shows, the organization for, and the acquisition of, property

to be used for the maintenance, support and education of its members.

Such a society could acquire and possess property without a limit, while the Mortmain statutes step in and limit acquisition in the case of church and religious societies.

Inside of the society, and one of its instruments, was a church, but the church was not the society, nor yet the society the church.

Thus, in Article III of the agreement of 1805, it speaks of the

"church and school."

Again in Article IV of the agreement of 1827.

Again, the agreement of 1847 speaks of appointing spiritual leader and having authority as to

"church discipline."

They all recognize the church a body, existing just as the school, but neither church nor school was the society or aught else, except one of the means of accomplishing one of the purposes of the society.

In Burtt vs. The Oneida Community, 137 *N. Y.*, 346, the Court of Appeals defined the purpose of that society as follows:

> "It is not important to consider the moral and religious teachings of the community, which were manifestly potent influences during the formative period of its existence. What principally concerns us now was its status as a business compact, and we must stop when we have construed the contract relation of the parties and determined the rights acquired by virtue of a membership therein.
>
> "In this aspect the main purpose of its promoters was evidently the propagandism of certain com-

> munistic views as to the acquisition and enjoyment of property and the endeavor to put into practical operation an economical industrial scheme which should embody and illustrate the doctrines which they held and inculcated. Necessarily the basic proposition of such a community was the absolute and complete surrender of the separate and individual rights of property of the persons entering it; the abandonment of all purely selfish pursuits and the investure of the title to their property and the fruits of their industry in the common body, from which they could not afterwards be severed or withdrawn except by unanimous consent."

Judge Grier, in the Nachtrieb case, defining the difference between the corporation organized for charitable purposes and the Harmony Society, said:

> "These accumulated for themselves; they have, by joint labor, accumulated property of great value, which they hold as joint owners."

(2) WHAT WOULD BE SUCH AN ABANDONMENT AS WOULD WORK A DISSOLUTION?

Not stopping to insist on what we have already proven, that all the live members at any one time constitute the society and hence can make such changes as they see fit in the society and the agreements which govern it, and no one can lawfully complain of it, let us assume that some outside person could complain, and see what the result is.

It is obvious that the Harmony Society agreements were between all of the members constituting the society. Each member was a contracting unit. In consideration of the unit surrendering to the society all his property and all his labor,

the society agreed to support him and his in health and sickness and for his and their lives, so long as they were in the society.

Each member can insist upon the futfillment of this contract, and the entire mass of the property is marked with that burden, and without the consent of each that property cannot be taken by one or all of the others and divided among them. What all the members but one cannot directly do they cannot indirectly do. If directly, by vote and act, they cannot take and scatter the common fund, they cannot accomplish indirectly by evil conduct.

The abandonment of purposes or principles which would take from each subscriber this lien he has on the common mass of the property, and would dissolve the society and scatter its assets, so that no one of the signing members could any longer have a society, it could compel to keep its covenants, or a common mass of property he could rely upon for his support must necessarily, therefore, involve all the members; not merely a part, but all.

If a third or a half abandoned, and the other half or two-thirds did not, but kept the faith, surely the latter would not be punished for the sins of others.

Surely because, say, the one-third or one-half were false to their written contract and promise to practice the virtues and affections of Christian fellowship, which tend to man's temporal and eternal happiness, this would not convict the other two-thirds or one-half who had not been false, but had faithfully kept their contracts.

Remember the contract is between each individual on the one side, and all the other members of the Harmony Society on the other.

Because some of the individuals kept not their part of the contracts is no reason why all the rest of the individuals and the Harmony Society should be prevented from keeping theirs.

The abandoment, then, would have to include all the members.

The things abandoned would be the purposes of the society.

That is, all the purposes.

Not part of them, but all of them—that is, all of the main things for which the society was organized.

It will be noticed that *no one of the members* asserts a dissolution, or asks for one, or alleges that the purposes of the society have been abandoned.

The allegation is made by alleged heirs of deceased members, and they ask the court to decree and adjudge that:

(*a*) There has been such an abandonment of purposes

as

(*b*) Should on their petition make a dissolution.

The abandonment must be utter and entire.

Not a temporary lapse, even if repeated, but a continuous and determined line of conduct, showing the settled purpose of wholly turning away from the original purposes of the society, and devoting the common fund to alien, incongruous and hostile purposes.

There was no abandonment before 1890.

The bill alleges this in the most direct and positive manner.

Paragraph 8th of plaintiffs' bill asserts:

> "*That the Harmony Society from the period of its inception until a recent date, adhered rigidly to its plan of government and became illustrious* and highly respected by reason of its sincere advocacy of the equality of man, its espousal of the highest principles of Christianity, and its honesty and benevolent administration of all public functions, whether in the management of its internal affairs or in its many transactions with the citizens of Western Pennsylvania."

Again, in paragraph 10th:

> "That during the year 1890, after a long period of *prosperity* and *complete harmony* in said society, began a second conspiracy." * * *

The present bill was filed on June 27th, 1894.

The abandonment then was after 1890, and between 1890 and June 27th, 1894, because when the bill was filed the allegations in it were (paragraphs 25, 26) that the Harmony Society *then was* dissolved.

The abandonment of purposes which worked this distructive effect in a society founded in 1805, and surviving the De Leon conspiracy of 1831, when 175 persons left and were paid $105,000.00, and the different litigations the society has had, was, the bill alleges, effected between 1890 and 1894, *and this with the admitted facts staring them in the face, that in 1890 and 1892 all the members of the society formally reaffirmed its ancient constitution and agreements.*

See those agreements.

Has the plaintiff shown such an abandonment of the purposes for which the society was organized?

Attention is just now called to the following:

The plaintiffs have not shown an abandonment by showing any written contract or avowal of the present members so to do. On the contrary, the last general articles of agreement in 1890 and 1892, signed by all the then members, distinctly affirms and re-establishes the agreement of 1847, which re-affirmed those of 1827 and 1836.

Thus the agreement of April 30th, 1890, signed by Henry Feucht and Julius Stickel, and every then member of the society, expressly affirmed:

> "We do hereby solemnly recognize, approve, re-affirm, and continue the articles of agreement and compact of our association entered into at Economy on the 12th day of August, 1847, and recorded in the Recorder's office of Beaver county, as set forth in the preamble hereto, *and declare the same to be in full force as a whole and all parts thereof, including the agreements and compacts mentioned and designated in the first article thereof, as fully and to the same extent as said mentioned agreements were recognized and established by said first article.*"

Referring to this agreement of 1847, we find in its first article it expressly affirms and continues the agreements of 1827 and 1836.

So in the spring of 1890, in a formal and solemn manner, every member of the society joining, we have a reaffirmation and republication of the agreement of 1827.

By another agreement, dated December 20th, 1892, all the members (except the Feuchts) said that they do

> "*hereby ratify and confirm* the articles of agreement and compacts of our association entered into at Economy on the 12th day of August, 1847, and those of April 30th, 1890." * * * *

This was the re-publication in December, 1892, of the agreement of 1827.

The appellants do not pretend to show any action *of the society*, or of its Board of Elders, formally turning away from the old things and kneeling unto alien gods.

Aside from the change in the industries of the society, and the state of its finances, the entire scope of appellants' evidence on this head is that certain individuals were guilty of immoralities, and that the Board of Elders, on complaint made, neglected to control the evil.

The master, in his report (Record, 173 to 185), has fully covered this question of abandonment in all its details and all the testimony on it, and on p. 185 he states his conclusions as follows:

> "The master, for the reasons hereinbefore set forth, finds that there has been no abandonment of the purposes for which the Harmony Society was founded, and that the said society has not been dissolved by reason of any such abandonment, and that the plaintiffs are not entitled to the relief prayed for in the bill."

This was approved and confirmed by the Circuit Court of the United States and the Circuit Court of Appeals, and as none of the testimony is printed from which the incorrectness of this conclusion might be argued, the finding stands as a fact in this court and relieves us of any discussion of the same.

Whether there has been an abandonment of the purposes

of the society is a question of fact. Especially is this so under the testimony in the case where the allegations of the appellants were flatly denied by the appellees, and the master found against the appellants.

We hereafter consider more in detail certain acts which the appellants still urge as proof of abandonment, but as to the main charge itself in the bill and under the evidence we refer to the master's report as conclusive. (See Record, page 138 to 196).

UNION COMPANY.

The sale to the Union Company of the home tract of land at Economy, and the Allegheny county land, it is asserted in the 20th paragraph of the bill, is an attempt on Duss' part

> "to wholly terminate the existence of said society, not only as to the government thereof by the Board of Elders and by the members, but also as to the ownership of any property."

Plaintiffs allege it was not competent for the trustees to make this conveyance, and it is a breach of trust and invalid, and really constituted a dissolution of the society.

The facts are, that after the debts of the Economy Savings Bank were paid, by the society borrowing large loans on long time, new troubles arose. Such suits as the present were threatened, which might involve the title of the society to its real estate, and prevent its sale to raise money.

Then, escheat proceedings were threatened, which would still further complicate the title. In addition, it was desirable to have the surplus value of the real estate, over and

above the mortgage, available for emergencies. To put the real estate where it could the more readily be sold, and to have its surplus value thus available it was advised that a corporation be formed capable of taking the real estate, and to it should be conveyed the real estate, and the stock (all of the stock) of the corporation should be owned and held by the trustees for the Harmony Society.

All the members of the society were consulted and all agreed to the expediency of the proposition, and accordingly, on April 11th, 1894, all signed an agreement (Record, pp. 112, 113), which, *inter alia*, provided as follows:

> "We, the members of said Harmony Society, do each hereby express our consent, wish and request that John S. Duss and Gotleib Reithmuller, the present trustees of said society, shall forthwith sell, transfer and convey to the Union Company, a corporation created and duly authorized under the laws of the State of Pennsylvania, all the lands, tenements and hereditaments situated in Allegheny and Beaver counties, Pennsylvania. * * * The capital stock of said incorporated company, however, to be owned and held by the said trustees for the benefit of the society in accordance with and under the terms and conditions of the articles of association of said society and the ratifications and modifications thereof."

The real property in Beaver and Allegheny counties was so conveyed and the stock issued to the trustees. No other of the real or any of the personal property was so conveyed.

The whole number of shares of stock was 7,950 issued to them, and 50 shares were issued to others to make them eligible as directors. But each one so receiving shares did so without paying anything therefor, and at once endorsed in blank his certificate and deposited it with the trustees. Thus, every share of stock was and is owned by the trustees of the Harmony Society and held by them under and in accordance

with the articles of agreement hereinafter referred to. The real estate conveyed was thus paid for by the shares in the corporation, and this stock became the property of the society.

Really and in truth, the Union Company holds the naked, legal title, for the use and benefit of the Harmony Society, because that society owns all the stock in the company.

Technically, the trustees have converted realty into personalty, and the personalty is now held by them in place and stead of the realty. The property is not distributed among the members of the society, but is held upon the same trusts, and by the same trustees, as was the real estate.

Have the trustees, in so doing, abandoned the purposes for which the society was founded, or violated the trusts confided in them?

No one of the articles of agreement pretend to determine how the money of the society will be invested—whether in realty or personal property.

The agreement of 1847 provides as follows:

> "*Article 5th.* The said trustees shall jointly and severally have and exercise the powers following, to wit:
>
> 1st. In their own names, or that of either of them, or otherwise, to purchase and sell, deal, barter, exchange and traffic, make all contracts and bargains, in the prosecution of the business, to invest the funds in stocks and other securities, and make transfers and assignments, to collect debts, receive and pay out moneys, settle claims, compromise disputes, institute legal proceedings, appoint and dismiss agents, clerks, and attorneys in fact and at law, and generally to transact all the external business affairs of the society.
>
> "2nd. To make donations to seceding and excluded members, and the representatives of those who are

deceased, and for such benevolent and charitable purposes as they deem prudent and fit.

"3rd. The said trustees shall have power jointly to purchase real estate in their own names, and also in their joint names to grant, bargain, sell and convey all or any of the lands and tenements now or hereafter owned by, or belonging to, the said society, and for this purpose to execute deeds of conveyance, in fee simple or otherwise, in their joint name, but the proceeds of all such sales shall be held in trust for the society."

This, undoubtedly, gave the trustees the most unbounded power to carry on all sorts and kinds of business, and to convert real estate into personal property, or personal property into real estate. The conversion was in their discretion. They might do so when it was deemed advisable.

To do so violated no trust. It was the legitimate exercise of undoubted powers.

When it is recollected that every single member of the society gave his or her written consent to such conversion (see Exhibit 80), the objection now raised by outsiders seems ridiculous.

Why might not all the then living members of the society agree, as they did, that instead of holding the lands at Economy in the name of the trustees, provided for in the agreement of 1847, they would convey the title to a corporation and hold all the stock as the joint property of the Harmony Society? Who is harmed by this?

How is it in any way inconsistent with any of the articles of agreement or in any way an abandonment of the purposes of the society?

Ever since the society was formed it has been buying lands, and thus converting personalty into realty, and it has

also been selling the realty and converting it into personalty. It did this on a very large scale when it sold all its real estate in Butler county, Pennsylvania, for money. It did it again on a large scale when it sold all its real estate in Posey county, Indiana, for money.

Then, too, the society in its many different business enterprises was constantly buying and selling real estate. Notably, it bought several farms and laid out what is now a very large and flourishing borough, Beaver Falls.

It sold off in lots all this property.

So, too, in its lumber, coal and oil business, it largely bought and sold real estate.

This conversion of the realty into the stock of the Union Company was not followed by a distribution of that stock among the members of the society, as it was in the Oneida Community case. If it had been, we doubt not the then living members, all agreeing, could so have done. But it was not done.

The Zoar Society in Ohio directly conveyed all its property to a corporation raised for it. Yet in all its litigation, in the cases reported and which we cite *ante*, was it ever supposed *that* terminated the existence of the society or was an abandonment of its purposes?

The master found all the facts in his report (see Record, pp. 112 and 114 and also pp. 160 and 163), and on p. 163 of the record he sums them all up as follows:

> "The master therefore finds that the conveyance to the Union Company by the trustees was not an attempt on the part of Duss to terminate the existence of the society and did not terminate it; that it was not a breach of trust on part of the trustees; that it was competent for them to make the conveyance; and, further, that it was not an abandonment of any of the purposes for which the association was founded."

This was affirmed by the Circuit Court and the Circuit Court of Appeals.

PRESENT PAUCITY OF MEMBERS.

When the bill in this case was filed there were living members of and in the society sixteen (16) in number. When the master's report was filed these were reduced to—— members, and at the present time death has reduced the membership to eight (8).

We treat hereafter fully of the causes which led to the withdrawal of many members. The Feucht litigation, the immense debt of the society—over $1,500,000—threats of state proceedings for escheat, and of suits like the present, not only induced many to withdraw, but since the Feucht bill was filed not a single person has presented himself for membership.

But we wish now to treat of the one question only. Do the articles of agreement or the purposes of the society require any given number of members?

The master has found the undoubted fact that

> "the remaining members of the society, although reduced in number by deaths, still occupy their property at Economy, still maintain their organization as the Harmony Society, as provided in the agreement of August 12, 1847; the Board of Trustees and the Board of Elders still continue their organization and attend to the affairs of the society."

The number of the Board of Elders is reduced to eight, and does include all the present living members of the society, but the appellants should not complain of this, because heretofore it was the exclusive nature of that board they objected to.

Remembering now that the main purpose of the society was the accumulation of property with which to support, maintain and educate its members, why may not eight do this as well as eighty? The subsidiary rules of conduct were those promoting Christian fellowship, and why may these not be observed as well—indeed, better—by a few than by many? The fulfillment of the will of God can certainly, within limits, be as effectually done by the few as by the many. The few will not need the large shoe shop or bakery or general store, but they get their requirements just as well by other methods. The number of acres tilled will be less, but so will the necessity of tilling more be reduced. All the members will be as well cared for, as well taught in school and church, better looked after than when the membership ran to hundreds. The society still owns all the property and the individual members still are bound to obedience to the Board of Elders, and in return the society is bound to support and maintain and clothe the individual member, as well in sickness as in health, to give him the benefit of school and church and look after his family. All this a society composed of eight will do as well as one of one hundred—indeed, will do it better, for more attention can be given to each

member. Trade and outside business may be as largely carried on as ever, but whether it is or not is a matter for the society. Its experience in the file works, the cutlery works and the bank cost it over one million dollars ($1,000,000).

No one of the agreements called for any special number of persons as necessary to organize or continue the society. Indeed, there is no evidence as to the number of persons who first came over with George Rapp, but certainly they were but few.

If it be argued that numbers are essential, we then ask two questions:

(*a*)—Why so? And what particular figure is it below which the members should not fall?

(*b*)—What portion of any one of the articles specifies a particular number? Please point it out.

What particular number would the appellants fix the membership at?

And what particular virtue do they find in such numbers they so fix?

The number of members has varied from time to time. In 1815, when the Butler county land was sold, there were four hundred and nineteen persons. In 1834, after the death of Frederick Rapp, a power of attorney was given George Rapp, and this was signed by four hundred and two persons. In 1832, when Count de Leon withdrew, 175 members withdrew, leaving —— as the then membership.

In 1847 there were 311 members.

In 1890 there were 45 members.

In 1892 there were 33 members.

In 1894 there were 18 members.

From 1805, when the society was founded, to 1894 was 89 years. Probably in 1894 not a single member of the Harmony Society was alive who joined it in 1805, or was a member in 1821 or 1827. All were dead, and of the membership which then survived, probably not one was a lineal descendant even of any ancestor who once belonged to the society. Yet that these changes were foreseen and provided against clearly appears from all the articles. Each lays stress on the fact that actual participating membership is a *sine qua non* to any one claiming under any of the articles, and he who left or died ended all his claim upon the society and its property. Necessarily, then, the society came under the ownership and control of those in succession. The surplus property the society had not used for the support of its members went to these survivors and the new members taken in. At any time all the live members might dissolve and give away and distribute its property among themselves, but until they did so, and so long as they lived under and in accordance with the articles of agreement, the society continued and lived, and this regardless of the decline in membership.

The master so held, and Judge Acheson, in his opinion (Record, p. 195), said:

> "There has been no dissolution of the society, either by the common consent of the members or by their acts. The membership, indeed, has become greatly reduced, but the rights of the society as now constituted are as sacred in the eyes of the law as they were when the membership was twenty-fold greater. The society as an organization exists in law and in fact."

The Circuit Court of Appeals used the same language.

WITHDRAWAL OF MEMBERS.

The master has found that the charge of appellants that Mr. Duss caused different members to resign, in order himself to obtain more absolute control of the society, is untrue. He says, p. 155 of the record, that the charge

> "is denied in the answers, is not supported by the evidence and *is not true*."

On pp. 155 to 159 of the record the master treats of the facts of each individual withdrawal, and he finds that in no one of the cases (except the Feuchts and Stickels) did Mr. Duss even willingly consent to the withdrawal, but endeavored to induce the one desiring to withdraw to remain.

Both the Circuit Court and the Circuit Court of Appeals affirmed this, so that it will take *much more* than the printing the form of the releases which each retiring member gave, and which the master and lower court fully considered, to reverse such finding.

We treat more fully of these withdrawals in a connected history of the facts which set forth the good works done by Mr. Duss in rescuing the society from total destruction by the machinations of the very men who instigated the present suit and sought by all kinds of abuse and ill treatment to drive him from his noble stand in defense of the rights of the helpless men and women who then formed the society.

CONSPIRACIES CHARGED IN THE BILL AND THE FACTS REGARDING MR. DUSS.

From the 8th to the 13th paragraphs of the bill the appellants eulogized the conduct of the society from its origin in 1805 to 1890, but allude to the Count de Leon conspiracy of 1831 by which the Count, alleging himself to be a forerunner of the second advent, gained many adherents in the society, the result of which was a division made in 1832, the count retiring with 175 members and about $105,000 in money, the others remaining with George Rapp; and then, 1890, the bill alleges that Mr. Duss and certain confederates organized a conspiracy to admit into the society Dr. Cyrus Teed,

> "the notorious libertine and adventurer,"

who was the friend of Mr. Duss, together with his depraved women whom he calls "angels," and thus turn the celibate society into a free love one.

To accomplish this, it is alleged, Mr. Duss sent to Teed large sums of money, and clandestinely admitted into the Harmony Society intimate friends of Teed; that Mr. Duss also caused to be erected at Economy a new and commodious building, which the society

> "expensively and luxuriously furnished and adorned"

for the express accommodation of the Korish society, presided over by Teed.

These actions of Duss, however, the 12th paragraph of the bill alleges, alarmed the Feuchts, who were members of the society, and the result was that the conspiracy was

> "abandoned and an entirely new and equally destructive plot was then arranged by said Duss with the assistance of other confederates not allied with said Teed."

All of these charges were denied in the answer. The master has found that not a single one of them was true.

Instead of Teed being a friend of Mr. Duss, he was wholly unknown to him.

What Teed's character was, and what his peculiar doctrines and practices were, there is not a particle of evidence to show.

Mr. Duss did not send any money to Teed, and instead of a new house at Mr. Duss' instance being erected for Teed, the evidence shows Mr. Duss opposed the building of the house, and it was erected against his protest, not for Teed, but for the saw mill hands employed by the Harmony Society.

The master concludes his review of all the evidence by finding that the charges

> "are not true, and that there never was any such conspiracy as is charged in the tenth, eleventh and twelfth paragraphs of the bill." (Record, p. 150).

The bill then charges (paragraphs 14 to 24) that when Mr. Duss failed to turn the society over to Teed, he

> "concluded to wreck and dismember the Harmony Society, and to obtain for himself and confederates what he had lost by not colonizing said society as aforesaid."

To accomplish this, the bill alleges, Mr. Duss did as follows: Having entire control of the Board of Elders, he directed that no new members should be elected

> "under any circumstances whatever,"

and that Mr. and Mrs. Duss were the last members admitted; as a part of his plan to obtain possession of the assets of the society he made arrangements with Judge Hice and John Reeves

> "whereby Duss agreed to use the money of the Harmony Society to pay off the alleged indebtedness of the Economy Savings Bank,"

and he did so use over $1,000,000 of the society's money; that this indebtedness of the bank was caused by the mismanagent of Hice and Reeves.

That on December 21, 1892, Mr. Duss,

> "conspiring to defraud your orators and the members of said society generally, and to provide means for the payment of the indebtedness of the said Economy Savings Bank,"

borrowed $400,000 and gave a mortgage on the Economy lands to secure it; that this mortgage was made without authority from the society, and Henrici, one of the trustees, did not comprehend it when he executed it.

That Duss, Hice and Reeves and other confederates, by a foreclosure of the mortgage, expect to obtain the land.

That in June, 1893, Mr. Duss borrowed $100,000 more and gave a mortgage on the same property for it in order to

> "induce the removal of those members most likely to inquire into the validity and propriety of his conduct as trustee."

That the society had large personal estate, amounting to nearly $2,000,000, and that Mr. Duss sold all this in order to raise funds to carry out his purpose to get hold, for the use of himself and his confederates, of the assets of the society.

That Mr. Duss induced the following members to withdraw, using as a means some $200,000 of the money of the society:

Samuel Siber, one of the trustees;

Hugo Miller,
Jacob Nichlaus,
Blazius Platz,
Moritz J. Fredericks,
} Members of the Board of Elders,

and put in their places Reithmueller, a relative of Duss, as trustee, and Susie C. Duss, Maria Diem, Fredericka Muntz, Regina Lautenschlager and Karoline Molt on the Board of Elders.

That, in addition, Mr. Duss

> "fraudulently and secretly induced by representation, coercion and the payment of large sums of money"

other members to withdraw, as follows:

Julius Stickel,
Pauline Stickel,
Sigmund Stievater,
Christina Hoerer,
Elizabeth Siber,
Benjamin Feucht,
Rebecca Feucht,
Henry Feucht,
Margaret Feucht,
Tirza Feucht.

That in April, 1894, Mr. Duss agreed with Hice, Reeves and James Dickson

> "to convey the town of Economy, the surrounding properties and certain other lands of the Harmony Society"

to the Union Company, a corporation of Pennsylvania, and thereby Mr. Duss

> "attempted to wholly terminate the existence of the society,"

and that Hice, Reeves and Dickson compose the Union Company.

That Mr. Duss, being unable to

> "obtain the consent of the remaining members to withdraw,"

is now compelling them to leave by intimidation and oppression, and gives Elizabeth Beck as one to whom Mr. Duss was cruel.

That Mr. Duss is selling the liquor of the Harmony Society without license.

That the principle of equality is abandoned, and while Mr. Duss and family live in luxury, the other members of the society

> "are now obliged to be content with the bare necessities of life."

That Mr. Duss is a man of bad moral character, and has been guilty of duplicity with Fredericka R. Kroll, a young woman he sent to Teeds.

This is the second conspiracy which the bill alleges, paragraph 12,

> "has been almost consummated,"

and these are the means by which Mr. Duss sought to accomplish his end, *i. e.*, to secure for himself and his confederates the property of the Harmony Society.

The answer denied all charges of conspiracy and improper conduct, and the master found, on a full review of all the testimony, that no one of these matters charged against Mr. Duss—*not a single one of them*—was true.

He sums up his different findings as follows:

> "The master finds that the averments of the 14th paragrah of the bill are not true."
> (Record, p. 150).
> "The 15th paragraph of the bill is not true as stated."
> (Record, p. 152).

After considering all the testimony and showing the society agreed to the mortgage and it was necessary to pay debts, and that the Harmony Society was a partner in the Economy Bank and liable for all its debts (Record, pp. 152, 153, 154), the master finds there was no evidence to support the averment that Mr. Duss intended to buy in the property under the mortgage,

> "and the master finds it is not true."
> (Record, p. 155).

Considering the evidence as to the $100,000 mortgage, which he finds has since been paid, and the charges that Mr. Duss has disposed of the personal property, he finds that the

> " * * * * * proceeds have been applied to the payment of the debts of the society and for its uses and benefit, and that the charge in the 18th paragraph of the bill that Duss is attempting to divert the assets of the society from the use of its members and appropriate them to the enrichment of himself and his confederates, is not true."
> (Record, p. 155).

As already shown, the charge in the 19th paragraph of the bill, as the master finds, that Mr. Duss had, by

> "artifice, misrepresentation, coercion and fraud, induced or forced all the active and more intelligent members of the society to withdraw, and has secretly and fraudulently appropriated several hundred thousand dollars of the moneys of the society and used it in getting rid of these members of the

society, is denied in the answer, is not supported by the evidence, *and is not true.*"
(Record, p. 155).

He then examines in detail the circumstances of each withdrawal (see pp. 155 to 159 of record), and adds:

"All the other averments in this paragraph of the bill are denied in the answers and not supported by evidence."
(Record, p. 159).

He then takes up the averments in the 20th paragraph, that Mr. Duss, without the authority of the society and by secret arrangements with Judge Hice, Reeves and Dickson, had conveyed certain of the lands of the society to the Union Company, a corporation of Pennsylvania, and that this was an attempt to

"wholly terminate existence of the society."

The answers admit and justify the conveyance of the land, and after considering all the evidence on it (pp. 159 to 163, Record), the master finds:

"The master, therefore, finds that the conveyance to the Union Company by the trustees was not an attempt on the part of Duss to terminate the existence of the society, and did not terminate it; that it was not a breach of trust on part of the trustees; that it was competent for them to make the conveyance, and, further, that it was not an abandonment of any of the purposes for which the association was founded."

Taking up the 21st paragraph, which charges that Mr. Duss is endeavoring by intimidation and oppression to compel the remaining members to depart, and which instances Elizabeth Beck as an object of oppression, all of which the answer denies, the master concludes (p. 164, Record):

> "The whole paragraph is denied in the answers, and is not sustained by the evidence. There is no evidence that Duss is endeavoring by any means to compel the remaining members to withdraw."

Then again, on p. 163, Record, he finds that

> "the charge of intimidation and oppression and cruel conduct on the part of Duss is not sustained by the evidence, and is not true."

Concerning the charge that Mr. Duss is engaged in the sale of liquor without license, he considers (see pp. 165 to 169 of Record) all the evidence on this and shows (p. 168) it is not true.

As the master shows, the Harmony Society was never a temperance organization, but engaged largely in the manufacture of wine, whisky and beer. The society always had a hotel in Economy where whisky, wine and beer were freely sold. Every week each member received a liberal allowance of wine or beer—greater in summer than in winter. Whisky was not so distributed except in case of sickness.

The charge (23d paragraph) that the principle of equality has been abandoned, and that Duss and his family live in luxury, while the other members get the bare necessities of life, is denied by the answers, and examined by the master, who finds (p. 170, Record):

> "There is no evidence that Duss and his family are enjoying any luxuries or living in any manner differently from or more expensively than the other members of the society; or that the aged and infirm are obliged to be content with the bare necessities of life.
>
> "The master, therefore, finds that there is no inequality or discrimination in the mode of life or treatment of members of the society, and that the averments of this paragraph are not true."

The averments of the 24th paragraph of the bill as to the moral character of Mr. Duss and the specific averments as to Miss Kroll are denied in the answer. A large amount of testimony was taken, and the master sifts it all (see pp. 170 to 173, Record), and concludes (p. 173):

> "The master, therefore, finds that none of the averments of the 24th paragraph are sustained by evidence, *and that they are not true.*"

The charge as to Miss Kroll was so fully disproven that both the Circuit Court and the Circuit Court of Appeals went out of their way to condemn it.

Judge Acheson said (Record, p. 190):

> "And now, before closing, we deem it to be our duty to declare that, after the most careful scrutiny of the evidence, it is our judgment that the charges of immorality made against John S. Duss, the senior trustee, in the 24th paragraph of the bill, are not sustained by the evidence, but are disproved."

Treating of the averments in the 25th paragraph of the bill, that said Harmony Society has become dissolved, which averment was denied in the answer, the master takes up all the testimony, including that of Feucht and Steickel, the mischief makers in this case, and considers all the reasons given by them as to *why* the society has been dissolved, which were that, according to their views, Christianity had been abandoned and drunkenness and adultery had become prevalent in the society since Mr. Duss took charge. He treats of it at length (pp. 173 to 185, Record) and concludes that no one of them is true. The evidence did show occasional individual cases of excess of drink, but nothing more.

Mr. Duss is a consistent temperance advocate, and it was not even pretended that he had been guilty of the offense charged.

Thus, in detail, the master met and rejected all the charges in the bill by which it was sought to show that the Harmony Society had been dissolved by mutual consent of its members or by abandonment of the purposes for which it was organized.

But it would be unfair and unjust to Mr. Duss not to sketch briefly his career in this society. Maligned and abused because among the faithless he was faithful, found the simple narration of the facts without exaggeration or rhétoric, will present him as an earnest, honest, determined and able man, working for the preservation of the Harmony Society.

MR. DUSS.

He was born at Cincinnati February 22, 1860. His father was a soldier and died in 1862. His mother brought him to Economy in 1862, and he remained there as a child until 1873, when he went to the Soldiers' Orphan School at Phillipsburg until he was sixteen; came back to Economy in 1876 where he remained until 1879, with the exception of a short trip to Germany. In July, 1879, he went to Mount Union College for several years. Leaving this college, he became a teacher in the reform school at Topeka, Kansas, but unable to stand the climate there, he returned to Ohio, and in 1882 was married to the present Mrs. Duss. After this he went to

Buroak, Kansas, in 1883, and purchased a stock farm in 1884, and in 1888, at the urgent request of Father Henrici, who was then senior trustee of the Harmony Society, he returned to Economy and began teaching school.

His mother had been continuously at Economy from 1862 to April, 1891, except for short periods. She joined the society in 1887.

In January, 1890, at the suggestion of Father Henrici, Mr. Duss and Herman Fischern, a former teacher, joined the Harmony Society. On January 2d, 1890, George Kirschbaum, one of the elders, was killed by an explosion of natural gas. Shortly afterwards John Wirth, another member of the Board of Elders, died of paralysis, and on January 22, 1890, Jonathan Lenz, the junior trustee, also died suddenly of heart disease.

It was after these deaths, and on January 24, 1890, that Mr. Duss, Herman Fischern and Jacob Nickalous were duly admitted to membership in the society, and afterwards elected to the Board of Elders to fill the then vacancies, and this without objection from any one. Ernest Woelful was elected junior trustee, and he died July 26th, 1890, and on July 28th, 1890, Mr. Duss was elected to succeed him.

When Mr. Duss was elected junior trustee he was ignorant of the financial condition of the society. Father Henrici was appointed by George Rapp one of the agents in 1834, and in 1847 he and Mr. Baker, under the agreement of 1847, were appointed the trustees. So he had been a trustee for nigh sixty (60) years, and since Lenz was appointed junior trustee, in 18—, Henrici had charge of all the business except the lumber and oil, which Mr. Lenz saw after. The extent of that business is given by the master (pp. 115 to 119, Record). It included glass and iron manufactories, dealing in coal and oil and lumber, running saw mills and cutlery works and file works, making of railroad cars, buying land and selling

it out in lots; organized and conducted the Economy Savings Bank, which at one time was of great reputation and had large deposits; built railroads, made and sold whiskey, wine, beer and cider.

The society undoubtedly then was supposed by the world to be very wealthy, but soon after Mr. Duss became junior trustee he found that the former trustees *never kept or had kept books of account.* There was no record whatever of any kind as to what the society owned or what it owed. Mr. Henrici was then advanced in years, but still tenacious of his position, and either could not or would not give the desired information. Mr. Duss, however, began to receive notices from different banks that notes of the society were falling due. By December, 1891, he found out that the great wealth of the society was a myth, and that its exact condition and whether solvent or not could only be demonstrated by an expert accountant. Accordingly, in April, 1892, he employed one of Pittsburg's most accurate experts, Mr. James Dickson, who at once entered on the search, and the result of the same beggared belief.

The indebtedness of the society was as follows:

Negotiable notes, ...	$317,350 00
Open accounts, ...	41,000 00
Debts due on demand, . . .	1,081,000 00
	$1,439,350 00

If to this accrued interest were added up to April 1st, 1892, the total debt would be over $1,500,000.

The banks that held the notes held some collaterals, but they were uneasy and pressed for more security or payment.

But the chief danger was the Economy Savings Bank, which was a partnership in which the society had $\frac{8}{16}$ interest, and hence was liable for all its debts. It owed about $1,100,000, of which sum about $1,000,000 was for deposits

due to say 3500 depositors, and practically on call. The bank had to meet this a varying cash account showing from $2,000 to $20,000 cash on hand. In addition, the bank owed to the state treasurer about $163,000, and he was pressing for payment. The other $\frac{2}{10}$ in this bank was owned by Messrs. Hice and Rieves, neither of whom was of any financial strength.

The Harmony Society had to meet all this, a considerable amount of stocks and bonds and real estate, which are all given in detail by the Master (pages 122 to 126); but the most of the assets were not readily convertible, and of the *quick* assets all were pledged as collateral for the notes of the society. Among these assets were 7866 shares of the stock and $276,000 of the second mortgage bonds of the Pittsburg, Chartiers and Youghiogheny Railroad Co. Both of these were then unmarketable, but Mr. Duss succeeded in the winter of 1891-2 in effecting a sale of both for $334,000. This enabled him to pay off the debt due the state, to reduce the debt of the Economy Savings Bank, and to carry the society over until the fall of 1892. The balance of the indebtedness, and especially that of the Economy Savings Bank, had to be provided for; and, instead of sacrificing the securities and realty, Mr. Duss conceived the idea of a large loan to run for several years and secured by a mortgage on the Economy lands. This he negotiated with Harry Darlington, trustee under the McCullough will, and arranged for a loan of $400,000, payable in five years. A question being raised as to the power of the trustees under the agreement of 1847 to make a mortgage, the whole society was called together and the matter explained to them, and on December 20th, 1892, a supplemental agreement was duly executed and signed by all the members except the Feuchts. This is given at length (pages 107 to 109) in the Master's Report. It gave undoubted authority to mortgage, and so on December 21st, 1892, it was

made and executed and the money received. All of the bank debts, where the personal assets had been pledged as security, were paid off and the securities released.

Mr. Henrici, the then senior trustee, died on December 25th, 1892, and Mr. Duss became senior trustee, and had as his junior Samuel Siber. Immediately after Mr. Henrici's death, the Feuchts began to make trouble. Newspapers in Pittsburg published items stating that the Feuchts were about to institute proceedings to dissolve the society, and these continued until such bill was actually filed on February 10th, 1893, in the Common Pleas of Beaver County, Pennsylvania, which did pray for the appointment of a receiver and for a dissolution and for a preliminary injunction to restrain the trustees from in any way disposing of any property. This, too, was bulletined in the public press, and naturally the before slow withdrawal of funds from the Economy Savings Bank then became a *run*. On the day the bill was filed depositors withdrew from the bank $117,110.03 (Record p. 127). The $400,000 loan had then been exhausted, and Mr. Duss, by temporary loans, bridged over the difficulty and triumphantly carried the bank through without closing its doors. Hice and Rieves, each owning $\frac{1}{10}$ of the bank, were financially weak and unable to assist, and the whole strain fell on Mr. Duss. On February 13, 1893, a meeting of the society was called, the Feucht bill explained, and thereupon a set of resolutions were unanimously passed, which, *inter alia*, were:

> *First.*—"That we protest earnestly against the filing of this bill, and we herewith make known our resolution to stringently oppose the same; that the same are directed against the fundamental laws of our society and seem to spring from selfish and un-Christian motives."

Second.—"That we herewith declare as untrue the charges which are made in said bill against our trustees, against our elders and against ourselves, and we herewith embrace this opportunity to declare our perfect trust in our present trustees and elders."

Third.—"That we require our trustees to employ counsel to take all necessary steps which they may deem wise and necessary to defeat said bill."

(Record, p. 110).

The Feuchts, as if determined to bankrupt every one connected with the society, and chiefly to gratify their revenge at Mr. Duss' success and Henry Feucht's degradation, made a motion for a preliminary injunction and receiver, which was argued on March 3d, 1893, and refused.

The commotion inside the society may be imagined. Here were the Feuchts still members; smart and never tiring of the dissemination to all the members of stories picked from the gutter and colored with malice; Henry Feucht, restless, unscrupulous and vindictive, abounded in false reports as to Mr. Duss and the condition of the finances of the society. This fomentation grew until its natural result appeared. The very best of the members, sick of it, disgusted with the turmoil which the Feuchts caused, fearful of bankruptcy, determined to withdraw, and all Mr. Duss' persuasion could not keep them.

The Feuchts litigation and the constant daily troubles with them persuaded the other members to get them out of the society, even at a wholly unreasonable price, and at last this was accomplished. The trustees paid to Henry Feucht and his wife, Benjamin Feucht and his wife and Tirza Feucht $38,000 in cash and eight (8) acres of land, worth, say, $12,000 more.

These facts could not be concealed, and pandemonium seemed to reign inside the society, with a desire, apparently, on the part of every one to withdraw. When urged to stay, they became restless and threatened Feucht's mode of compulsion.

The trustees, under the agreement of 1847, were authorized

> "to make donations to seceding and excluded members."
>
> (Record, p. 69).

This had before always been in substance included in the earlier agreements, and these left the amount to the judgment of the *superintendent*. See agreement of 1836, p. 64, and the same provision in the agreement of 1827, p. 61–2.

The result of all this turmoil was that the following members did withdraw and received the following sums:

March 8th, 1893.	Hugo Miller,	$5000
March 29th, 1893.	Julius Stickel,	$3500
	Pauline Stickel,	
	Bertha Garatch,	
May 5th, 1893.	Jacob Nichlaus,	$5000
May 17th, 1893.	Sigismund Stievater,	$5000
June 5th, 1893.	Moritz J. Fredericks,	$5000
June 9th, 1893.	Blazius Platz,	$5000
June 23d, 1893.	Christian Hoerer,	$5000
	Leonard Hoerer,	
July 6th, 189—.	Samuel Siber,	$5000
	Elizabeth Siber,	

The Master found that (page 112 of Record),

> " * * all of these withdrawals, except that of Siber and his wife, were in the opinion of the Master caused by that (Feucht) litigation."

See for full consideration of each withdrawal pages 155 to 158, where, among other things, the Master found that:

> "Mr. Duss did not try in any way to induce any of these persons to withdraw, and no witness testified he had done so. * * "
> (Page 157).

Mrs. Siber withdrew because of charges against her character, and her husband was unwilling to remain because of these rumors, and also her withdrawal.

The Master found (p. 157):

> "Mr. Duss and all who talked to him (Siber) about his leaving wanted him to remain."

The Feucht withdrawals compelled them to discontinue their suit, but the run on the Economy Bank still continued, and in May, 1893, a second mortgage was given and a second loan of $100,000 obtained.

Mr. Brooks, who had greatly aided Mr. Duss in raising money, and who, at one time, pledged his personal responsibility to effect it, advised Mr. Duss to have the society organize a corporation to which to convey its real estate. The real estate would pay for the stock, all of which would be owned by the society. It was not intended to divide the stock. Its trustees were to hold that stock for the society. The reasons for this were several. New suits were threatened against the society which it was thought would more certainly tie up the sale of its real estate if the title was in the trustees than in a corporation. Then, as the trustees hoped to sell many small parcels of realty, it was believed one abstract of title and opinion on it could the better be used than if it were still owned by the trustees. If the reality was owned by the corporation there was no question of a technical equitable

estate in the members. The additional reason that stock was more easily handled and could be pledged to secure loans prevailed, and on April 11, 1894, all the members signed a paper consenting to such conveyance to the Union Company, and it was made.

(Record pages 112, 113 and 114.)

The stock went to the trustees. The title to the realty vested in the Union Company, but the society, owning all its stock, continued in undisputed possession and use of the realty.

Mr. Duss sold, as speedily as good prices could be obtained, the stocks and bonds the society had, and also sold part of its real estate, until on January 1st, 1896, the society, which he found overwhelmed with debt in 1891, showed up as follows:

The total indebtedness of the society had been reduced from $1,474,958.58 of November, 1892, to $360,000, with a possible $11,000 more, on January 1st, 1896. The second mortgage had been fully paid off, and of the $360,000 of debt, $350,000 was on the Darlington mortgage for $400,000.

To meet this indebtedness the society had, *exclusive* of the village of Economy, other real estate valued at $203,725.01, and personal property valued at $366,672.05, making a total of $570,397.06.

(Record, p. 128, 129).

The master, at very considerable length, has taken up and treated the question of the financial condition of the society. See Record, pp. 122 to 137.

It is hardly necessary here to repeat that, but if any one desires the fullest information, he will find it on the pages referred to.

Thus, through good and evil reports, through adverse circumstances which would have made most men quail, Mr. Duss rescued the Harmony Society from the greatest peril it ever encountered. For so doing he who truly was its saviour is openly charged with attempting to wreck and ruin it. If it had not been for him, the society would have had no property to fight about; yet he has been the target for endless abuse by the very men who seek to participate in what he has saved.

Startled with the discovery of a debt not one cent of which he created or was morally responsible for, which threatened total ruin to the society, he found all the society's available and quick assets tied up by pledges to different banks, while creditors were uneasy and demanded cash. In the very height of his troubles Mr. Henrici died, and the Feucht faction, hitherto restrained by Mr. Henrici, began a system of attacks which necessarily weakened the already tottering credit of the society and irritated to insubordination the men in the society who might have aided, or, at least, encouraged, Mr. Duss in his determined struggle. With a run on the Economy Savings Bank which threatened to close it, the Feuchts filed a bill in equity against the society praying for a distribution of its property, and prayed for the appointment of a receiver and for a preliminary injunction to restrain Mr. Duss from any further payment out of assets. This increased the run

on the bank and the irritation of the members of the society, and just when money—ready cash money—was all needful to rescue the society from ruin by its creditors, this *internecine* strife was begun. So Mr. Duss' task was not only to pacify the outside creditors, but the Feucht faction and the other irritated members within, and the only means of doing so was *cash*. When he tried to raise it by mortgage the Feuchts claimed he had not the power to pledge the property for borrowed money. Let Mr. Duss turn where or how he would or propose any possible action, the Feuchts were against him. Indeed, the plaintiffs in their bill (paragraph 16, p. 12, of Record) attacked the validity of the mortgage which was mainly instrumental in saving a part of the property of the society, an interest in which the appellants are claiming.

With such an enviable record of real, substantial, good service to the Harmony Society, it is too bad, *too bad*, that Mr. Duss should be so maligned and misrepresented as he has been in this case. All of these people should bow to instead of reviling him.

When the Feuchts and the appellants, by their suits and charges of fraud and general misconduct, have themselves been the means of driving men out of the society, it is *too bad* to turn around and blame Mr. Duss for such withdrawals.

When these suits and charges have deterred all outsiders from any desire to enter and become a member of the society so that no application of the kind has been made since Feuchts' bill was filed in 1893, it is *too bad* to blame Mr. Duss with this distrust and treat it as if he had worked for it and brought it to pass.

When Mr. Duss alone of all the men of the society who could aid it in its troubles *did* render it the most essential aid and saved it for the members from ruin, it is *too bad* that such beneficent conduct on his part, it is now claimed, was a skillfully devised plan to seize into his own possession and use the property of the society.

The master, Judge Acheson and Judge Gray all listened to the complaint of the appellants as to the Union Company and the conveyance to it of most of the real estate of the society, and all agreed with us that the society had the power, all members agreeing, to change realty into personalty or personalty into realty. Indeed, this power, as we have shown *supra*, rested in the trustees. That there was no evidence showing any intent by this change to terminate the society or divide its assets among the members. That there was no *secrecy* about any of the matters connected with the Union Company, but, on the contrary, it was advertised in the newspapers, its charter publicly issued at Harrisburg and the deed of the trustees conveying to it the real estate was recorded in the recorder's office of the proper counties.

Why should appellants print and repeat, as on pages 52 and 55 of their brief, that Mr. Duss is practically the last survivor, and as such claims all the property of the society, when nothing in the case in any way justifies so flagrantly wrong a charge?

APPELLANTS' HISTORY OF THE CASE.

We differ so widely from appellants in their statement of many of the alleged facts of the case that duty compels us (after most of our brief was in print) to briefly call attention to some of the errors made on their part.

This court has before it an agreed record. The appellants were not forced to make it so, but were at perfect liberty to have printed all the testimony. Choosing not to do, they cannot be heard to *intimate* or *suggest* that *if* the evidence were printed it would show errors in the master's finding of facts. Just the contrary, it would confirm the master's findings and expose the groundlessness of appellants' claims.

This agreed record, besides the docket entries, bills and answers and assignments of error, consists only of:

(I.)—The master's report.

(II.)—Opinions of the Circuit Court and Circuit Court of Appeals.

(III.)—The release or quit-claims of retiring members between 1900 and date of filing bill.

(IV.)—So called records of the Union Company.

There is nothing else part of the record from which this court can or appellants should seek to ascertain the facts than the master's report and the opinions of the Circuit Court and Circuit Court of Appeals. The bill is printed, but the answers deny its averments. The releases of *withdrawing* members and the charter of the Union Company are all in the master's report, and add nothing to the appellants' case.

Where the record is agreed upon, this court, in the words of Rule X.,

> " * * * * will consider nothing but those parts of the record."

This being so, why should the appellants so often state alleged facts of which there is no evidence whatever, and as to which the master and both the lower courts found against their view?

Let us direct attention to some of their mistakes:

(*a*)—That never until Mr. Duss was elected senior trustee did such trustee and his wife occupy the chief house and preside over the society.

The fact is just the contrary. George Rapp, the founder of the society, was married and he presided over the society from 1805 to 1847, and after they came to Beaver county Rapp, with his wife, lived at the Great House.

(*b*)—That because Mr. Duss and Siber, the two trustees, were married,

> "these occurrences excited comment among the old members of the society, for it effectually destroyed the doctrine of celibacy."

Instead of this being so, as the master has found (Record, pp. 182, 183), in 1814 two hundred and two (202) married men and their wives, along with George Rapp and Christina, his wife, were members of the society. In 1845 there were twenty-nine (29); in 1848, twenty-three (23); in 1890, five; in 1892, six.

In 1829 the parents of the Feuchts, having temporarily left, were allowed to return to the society, "*having born to*

them in the society and during their membership four children." (Record, p. 182).

The agreements of 1805 and 1827 contain express covenant from Rapp and his associates, or association, not only to provide for the members themselves, but also for "*their children and families.*" (Record, pp. 57, 61).

(*c*)—Time and again appellants assert that Mr. Duss bought out members of the society and induced them to leave; that he distributed the assets of the society among the members; that he acted as liquidating trustee; that he negotiated for the interests of Kellerman and Gilman; that he persisted in his actions to persuade or force members to withdraw, and used the assets of the society to accomplish his purpose. On certainly twenty pages of the appellants' brief, in one shape or another, such charge is reiterated and attention constantly called to the large sums paid withdrawing members.

The master found (p. 112, Record)

> "and all these withdrawals, except that of Siber and wife, were, in the opinion of the master, caused by that litigation" (Feuchts' bill).

Again, on page 158 of Record, after an exhaustive consideration of all the evidence, he found:

> " * * * * * and the action of the trustees in their settlements with the withdrawing members was certainly prudent and, under the circumstances, *for the best interests of the society.* * * * * * *
>
> "It is thus evident that the withdrawal of these members *was not caused by any scheme or action of Duss*, but by the filing of the Feucht bill against the society, and the consequent excitement and panic caused by the actions of the plaintiffs, prior to and after it was filed."

Judge Acheson, who, in his opinion, said he had read all the testimony, confirmed these findings, and the Circuit Court of Appeals also affirmed them.

(*d*)—The appointment of a master was not caused by frequent refusals of Mr. Duss to answer questions, but by the appellants insisting on a line of examination that counsel of appellees objected to, and which Judge Acheson characterized as unwarranted.

(*e*)—Complaint is made of the space the master gave to the accounts of Mr. Duss and of the Harmony Society. We claimed below, before the court and the master, that the appellants must first show an interest in the property of the Harmony Society *before* he could go into its and Mr. Duss' accounts. Acknowledged to be right in that (see Judge Acheson's opinion, p. 55, Record), still after the master's appointment the appellants practically introduced all the evidence they desired, and, amongst other things, went into these very accounts.

(*f*)—The master found, what the articles of agreement which make the constitution of the society *prove beyond doubt*, that celibacy was *not* one of the purposes for which the society was organized. It was early advocated as an exalted mode of life, but that it ever was *one* of the purposes for which the society was organized is unsupported by any evidence in the case. It is not referred to in any of the agreements, but it was practiced to a large extent.

It never has been abandoned. The assertion that it has is wholly unsupported, and is contradicted by the master's report, affirmed by the decrees of the Circuit Court and Circuit Court of Appeals.

(*g*)—The appellants constantly reiterate the formation of a conspiracy by Mr. Duss and others to wreck and terminate the existence of the Harmony Society, and assert that every act of his is towards that end, and that his scheme is to become the sole survivor of the society, and thus own all its property.

The master found that not one word of this charge is true; that, instead of scheming to destroy, he worked to save the society; that he was its benefactor in a very large and very true sense; that had it not been for Mr. Duss there would have been no property saved to fight about.

Judge Acheson thought these charges were so unjust that they should be denounced, and hence in his opinion he says:

> "In respect to the alleged conspiracy to wreck and dismember the Harmony Society, we feel called upon to say that we fully agree with the conclusion of the master. The acts here principally complained of were, we think, designed not to destroy the society, but to save it from the consequences of business mistakes made by none of the present officers or members of the society and for which none of them are at all responsible. The measures resorted to in the emergency which was upon the society were successful in extricating it from great financial peril."

Judge Gray, who wrote the unanimous opinion of the Circuit Court of Appeals, after referring to the agreement of the master and the Circuit Court on the finding of facts, said:

> "A careful examination of the testimony and evidence contained in the record before us * * * * convinces this court that they were in all respects justified."
>
> (Record, p. 214).

Then he uses the very language of Judge Acheson in finding the falsity of that charge of conspiracy.

(Record, p. 217).

(*h*)—The value of the property of the Harmony Society is liberally dealt with. On page 25 of their brief it is stated as at least $4,000,000. On page 12, that, after paying all debts, there remains between

> "four and five millions dollars of assets."

There is absolutely nothing in the record to justify this, and as a fact it is a gross exaggeration.

(*i*)—On page 156 appellants excuse themselves for not proving

> "the general bad character of John S. Duss"

by citing Judge Acheson's opinion while the case was before the examiner and prior to the appointment of a master.

Yet on the next page, 157, they assert

> "every charge we made against Duss was supported by testimony produced by appellants."

As a fact they had every opportunity before the master to prove all material allegations.

(*j*)—On page 27, and again on page 157, appellants refer to the charge in this case whereby an innocent girl of eighteen was alleged to have had improper relations with Mr. Duss.

The charge will be found in the 24th paragraph of the bill, and denied in the answers. It had no evidence to support it, except the maliciously false evidence of a witness by the name of Weggle, who on the stand recanted and openly avowed the utter falsity of his charges.

His story, as the master's report shows (pp. 170–173), was overwhelmingly met by appellees. The young lady herself and Mr. Duss denied it under oath. The circumstances showed its absolute falsity, and the master, the Circuit Court and Circuit Court of Appeals unite in condemning it.

On page 172 the master finds

> " * * * * * that the charges made by Weggle against him (Duss) and Ricka Kroll are untrue and entirely without foundation in fact; and that the averment that Duss is a man of bad moral character is not sustained by the evidence. * * * * * *
>
> "The master, therefore, finds that none of the averments of the 24th paragraph are sustained by the evidence, *and that they are not true.*"

Judge Acheson, before concluding his opinion, said:

> "And now, before closing, we deem it to be our duty to declare that, after the most careful scrutiny of the evidence, it is our judgment that the charges of immorality made against John S. Duss, the senior trustee, in the 24th paragraph of the bill, are not sustained by the evidence, but are disproved."
>
> (Record, p. 196).

The Circuit Court of Appeals adopts this language.

(Record, p. 218).

(*k*)—It is also time and again reiterated that Mr. Duss has ordered that no new members be taken into the society, and that he persists in carrying this out, knowing it means the death of the society; that no new members have joined since Mr. Duss became senior trustee.

Mr. Henrici died Christmas, 1893, and Mr. Duss succeeded him. Immediately the Feuchts started the rumors as to the troubles in the society, and this was followed by their bill in equity and the trouble growing out of the financial condition.

No wonder no one ever applied for admission to such a seething mass of troubles.

No sooner was one matter settled than these appellants began their litigation, asserting the society was dissolved and asking for a receiver.

Would any man or woman worthy of admission join the society when it meant to be an additional party defendant in

this litigation? By joining he or she gave up all their property to the society and promised implicit obedience. Would any one do this with a law suit pending which claimed that all the property of the society should be distributed among all the descendants of all the members since 1836?

As a fact no one has applied for membership, but it is entirely unwarranted to charge that Mr. Duss has given orders to admit no applicant.

BRIEF EXAMINATION OF SOME OF APPELLANTS' LEGAL POINTS.

(I) Appellants (pages 4 and 5 of their brief) assert that:

> "The article of 1836 is the *only material* article *bearing upon the property rights of the plaintiffs*, while the articles of 1805, 1821, 1826 and 1847 are material in considering the character of the trust, the purposes and principles of the society, etc."

Prior to 1836 the Harmony Society had existed from 1805 and hundreds of persons had been members.

These members by three written agreements—1805, 1821, 1827—had accurately defined the respective rights of all the individuals composing the community and of each separate individual as a unit. In the agreement of 1827 the parties say that the purpose of making it was to definitely fix

> " * * * * that the condition of membership should be clearly understood, and that the *rights* and privileges and duties of every individual therein should be so defined as to prevent mistake or disappointment on the one hand and contention or disagreement on the other."

Then follows in detail, as we have seen in the prior part of this brief, the respective covenants which accurately determine the rights of each individual member.

The sixth article provided for the payment to a member who withdrew of

> "the *value* of all such property, without interest, as he or they may have brought into the community."

The agreement of 1836 refers to and copies at length the sixth article of that of 1827; asserts that it is inconsistent with

> "the great principle of a community of goods and may tend to foster and perpetuate a feeling of inequality at variance with the true spirit and objects of the association,"

and is also now unfair because in 1818 all evidence of contributions was destroyed.

"*Now, therefore,*" this agreement says we do

(1) Annul the sixth article of the agreement of 1827, but that

> "*all others remain in full force as heretofore.*"

(2) All property shall be deemed

> * * * * "joint and indivisible stock; each individual is to be considered to have finally and irrevocably parted with all his former contributions, whether in lands, goods, money or labor; and the same rule shall apply to all future contributions, whatever they may be."

(3) In case of departure from or death in the society,

> "neither he, in the one case, nor his representatives, in the other, shall be entitled to demand an account of said contributions, whether in lands, goods, money or labor, or to claim anything from the society as matter of right."

By some esoteric process the appellants do not explain they allege this worked an entire transformation in the rights of the individual members and enabled every one of them who died in the society since 1836 to transmit to his heirs an inchoate title which overhung the society during all its life and on its dissolution—it might be one hundred years after 1836—would ripen into one giving its owner the right to participate in a division of its property.

To ordinary view the articles of 1836 in no respect changed those of 1805 and 1827, except as to the return of the value of property contributed. Indeed, they were careful to so state in the article itself that, except the 6th, all the other parts of the agreement of 1827

> "remain in full force as heretofore."

It added nothing to any individual right of any member, but was negative in denying rights theretofore existing.

The property was declared to be "joint and indivisible stock," but such it was under the agreements of 1805 and 1827, except the right of the seceder to the value of his contributions.

And then, as if in words to deny the very things the appellants now assert, *i. e.*, that each individual had a title in the joint property which would survive him and go to his heirs, it adds in its own words:

> (*a*) "Each individual is to be considered to have *finally* and *irrevocably* parted with all his former contributions, whether in lands, goods, money or labor; and the same rule shall apply to all future contributions, whatever they may be."

The words are "finally" and "irrevocably" parted—not parted for a time, or during good behavior by the trustees, or so long only as a society exists to carry out certain purposes, but over and beyond all these parted

"*finally and irrevocably*."

(*b*) And, as if this was not plain enough, and seeing that such persons as the plaintiffs might one day give trouble, they added:

> "Should any individual withdraw from the society or depart this life, neither he, in the one case, nor his representatives, in the other, shall be entitled to demand an account of said contributions, whether in lands, goods, money or labor, or to claim anything from the society as matter of right."

Now, the plaintiffs' whole case on title is that certain of their ancestors *did* depart this life and they, as *representing* such ancestors, can make claim to the society's property. But this is directly in the teeth of and to the contradiction of the words of those ancestors in the agreement under which these plaintiffs claim.

The appellants claim that, though it is a fact they cannot deny that no one of their ancesters ever contributed one cent in property or money to the society, and therefore could not have had in 1836, or at any other time, any right of restitution, *yet* by this agreement of 1836 each became donors of all the property of the society for certain uses and purposes—and donors in such a sense that, contrary to the very words each used in that agreement, each held back a title in the thing he contributed, which title he could transmit to strangers.

As no one of the appellants ancestors contributed aught to the society, no one of them had any right of restitution in any shape or form. Stripped of its verbiage the appellants position is then that *because* their ancestors in 1836 agreed to give up the right of restitution, *which they did not possess*, this of itself and by some magic transformed them into donors of

all the society's property to the society itself even when they must admit they gave nothing. Now the society before 1836 owned all the property and the individual member as one of the whole had the right to insist on his support and maintenance out of it—but only so long as he was a member—a living member. This being so, the agreement of 1836 contributed no property whatever to the society. Not one cent was added by that agreement. No one of the appellants by signing that agreement relinquished any right whatever, but each stood as the society did just as they were before it was signed. It is true that those who contributed property to the society did give up the right of return if one left, but no one of the appellants contributed aught.

The appellants now claim that *only* the representatives of those who died in the society after 1836 can participate in the distribution of its property. (See their brief, pages 28, 29.)

This was not the claim made in the bill when the descendants of those who left the society also claimed to participate in its property. (See second and third paragraphs of the bill.)

Why are all the members who died between 1805 and 1836 cut out, even though each may have largely contributed property to the society?

Yet the appellants whose ancestors never gave a cent claim that the agreement of 1836, long subsequent to the death of many members who did contribute, cut off all the descendants of every dead member prior to 1836? And not only did this, but created new donors for a property the society already owned.

Of course, the conclusion is that, as much as we may admire their intellectual gymnastics, the rights of parties clearly defined by written agreements cannot be taken away by brilliant devices or argument. The agreement of 1836 did not work such magic as appellants claim.

But in one respect the appellants' argument is the direct affirmation of the validity of our main contention, *i. e.*, that all the members of the society at any one time constitute it, *are* the society, and may change all of its agreements and sell or give away or divide all of its property.

The appellants rest all their rights under the agreement of 1836. The persons who made that agreement were the members alive at that time. If, as appellants claim, it revolutionized the property rights of individual members and cut off the heirs of all dead ones, how did those members alive in 1836 get such power? Simply because they then constituted the society. They were the society, owned all of its property and might regulate it as they saw fit. We freely admit that those alive in 1836 *might* have made any change they saw fit, but say they did not do as claimed.

But if those alive in 1836 could do so, why might not those alive in 1840, or 1860, or 1880, or 1900, do the same?

What particular power resided in all the members in 1836 that all the members at any hour of all the future existence of the society did not have and do not now have?

COMPETENCY OF SOCIETY TO OWN PROPERTY.

The appellants agree (pp. 28–60 of brief) that originally Frederick Rapp, the then trustee or general agent of the society, took title in fee simple absolute to all real and personal property conveyed to him, without any sort of reference to an ulterior trust. This is equally true of conveyances to the subsequent trustees, with possibly one or two exceptions. So far, then, as the outside grantor is concerned, he cannot possibly have any resulting trust or reverter under a base fee, for he made an absolute, unqualified conveyance in fee simple, without any reference of any kind to a trust.

The question of trust *only* arises between the trustee and his *cestui que trustents*, the members of the Harmony Society. If this trust is void for any reason, it is the *cestui que trustents* only who suffer, not the trustee. If his attempt to be honest with them and hold in trust for them the property vested in him is met by them as the appellants meet it, by denouncing the trust as invalid and really immoral, then, if that be true, the trust will fail. The *cestui que trustents* take nothing and the trustee owns the property.

How will that benefit these appellants?

But no such result follows a plain recital of the facts. The trustees under the agreement of 1847 do in each instance affirm that all the property, real and personal (*ante*, p. 63),

> "is and shall be deemed the *common property* of said society, and each trustee now or hereafter appointed hereby disclaims all personal interest in the present resources and future earnings of the society *other than that of a member thereof*, according to the articles of association hereby re-established and continued, and according to the present agreement."

So, too, in 1834, Baker and Henrici, the then trustees and general agents, agreed that (p. 49, appellants' brief) they

> "shall neither acquire nor claim any personal interest in the present resources or future earnings of the said society *other than that of a member of the said society*, agreeably to the plans and terms of association, but shall be considered as exercising the same trust mentioned in a declaration of trust signed by Frederick Rapp on the 20th day of July, 1825."

The Harmony Society, in each of the agreements these extracts are taken from, is constantly named and referred to, and is *the* society they speak of. It is sometimes called the society, and sometimes the community. (See agreement of 1805, Record, p. 57).

Now the appellants argue that the Harmony Society

> "is the sole beneficiary as an organized community,"

and that the

> "members of the society are not beneficiaries,"

but the society alone has

> "the benefit of the trust property."
> (Appellants' brief, p. 42).

Again on page 62 they assert:

> "*The society as such is absolutely distinct from the members as such.*"

Are these assertions true? The idea of a universal which actually exists and is distinct from the individuals composing it was argued by the school men in the 14th and 15th centuries, and is here in substance reasserted, but the plain answer is, as all the cases cited and the written agreements show, that the Harmony Society is and always was com-

posed of all its individual members; these, taken collectively, are the society; taken individually, are its units or members. There is no uncertainty as to who they are or ever were. No one could become a member until he signed the society agreement.

Hence you need only look at the signatures to see who the members are. All these agreements were in evidence.

For easy and overwhelming proof of our assertion let us refer to some of the agreements.

In that of 1805 the parties are (pp. 56–58 Record)

> " * * * * * the subscribers of the one part and George Rapp and his associates of the other part."

It concludes with the final clause:

> "In confirmation whereof *both* parties have *signed their names.*"

Would not these signatures prove who the associates of George Rapp were, and would not Rapp and the associates and the joining members constitute the society?

In the agreement of 1821 (Record, p. 58) it is said:

> " * * * * * the present agreement, treaty and alliance was made and concluded between us, the following persons, to wit, * * * * * of the one part and George Rapp and his *association* on the other part."

It speaks "of the community of George Rapp and his association," and concludes by saying:

> "In confirmation of these presents we *both parties* have hereunto set our hands and seals."

Would not the signatures show who composed the ***association:***

The agreement of 1827 speaks in the preamble of (Record, p. 59)

"an association or community"

formed by George Rapp and many others, and then says:

> "That we, the undersigned citizens of Beaver county, * * * * do severally and distinctly, each for himself, covenant, grant and agree to and with the said *George Rapp and his* associates."

It states the purpose of making it was to accurately define the rights of each member.

It concludes by saying:

> "In witness whereof and in testimony that the undersigned have become members of the said community upon the conditions aforesaid they have hereunto severally and each for himself set their hands and seals."

This was signed by 522 members of the society.

Is it not easy to prove who they were?

The agreement of 1836 (Record p. 63) recites:

> "WHEREAS, *the Harmony Society, consisting of George Rapp* and *many others*, now established in the town of Economy, in Beaver county, Pennsylvania, *did on the 9th day of March, 1827, enter into* certain Articles of Association."

It reiterates that all you need to do to find out who constituted the Harmony Society is to see the signatures to that agreement of 1827.

The signatures to the agreement of 1836 shows who then composed it.

In 1834, and after the death of Fredrick Rapp (Record p. 65), the members of the society appoint George Rapp as the new agent, and the paper so appointing

Referring to the previous appointment of Frederick Rapp —the scope of it—and his death, add:

> "Now therefore be it known that we the undersigned, *constituting said Harmony Society*, do hereby nominate, etc."

This was signed by 402 members.

There could be no doubt then as to the membership.

Again in the agreement of 1847 reciting the death of George Rapp it says:

> "Therefore be it known to all whom it may concern that we the undersigned, surviving and *remaining members of the Harmony Society and constituting the same do, etc.*"

Then, too, in its conclusion this agreement says:

> "In witness whereof, we the undersigned members of the Harmony Society *who constitute the said association*," have, etc.

This was signed by 238 members.

The agreement of 1890 (Record p. 228) recites *inter alia* that,

> "on the 12th day of August, A. D. 1847, *all the then members of the said society*, by articles and a compact in writing * * * * adopted and estab-

> lished a system and plan for the regulation and government of the society * * * *"

and then stating the advisability of a new supplemental agreement stated:

> "Now therefore be it known to whom it may concern that we the undersigned, the *surviving and present members of* the Harmony Society at Economy aforesaid *and all the present members of said society do, etc.*"

Then it gave the names of all the members of the society.

It is clear then that the society referred to in the declarations of trust is the Harmony Society made up of the individual members who compose it.

Under these declarations all the members composing the society jointly are *cestui que trustents* with no uncertainty as to who they are at any one time or who are referred to in the declaration of trust as the society. But just as certainly so long as each member is in fellowship he is a *cestui que trustent* and has an interest as such in the joint property and a standing in court to protect it.

These declarations of trust are each combined with all the agreements of the society then in existence and are all to be read together, and in the declaration of George Rapp and Henrici and Lentz in 1834 they agreed that they had no personal interest in the property thus held,

> "*other than that of a member* of the said society agreeably to the plans and terms of the association."

In the declaration in the agreement of 1847 the trustees agree that the property

> "is and shall be deemed the common property of said society,"

and that they have no interest in it,

> "*other than that of a member thereof*, according to the articles of association, etc."

As a member each did have an interest. So long as a member was in fellowship in the society each could claim that all the common property should be used if necessary for his maintenance and education and that of his family.

Thus the declarations of trust included not only all jointly but each individually—though the individual held this right in common with every other member of the society in the joint property.

Judge Grier, in the Nachtrieb case 3, *Wallace, Jr.*, 82, said:

> "*Each* (member) had an equal right to and *interest in* their common property * * * * * In dealing with the rights of personal property the court can only look at the agreements of the parties * * * * These (members of the society) accumulated for themselves; they have by joint labor accumulated property of great value which they hold as *joint owners.*"

In the Speidel case, 15 *Fed. Rep.*, 753, Judge McKennan held:

> "The trust alleged here was instituted for the *equal and exclusive benefit of the members* of the Harmony Society."

This court in its opinion states that it was

> "in trust for their common benefit as a community living together in the community, working for the community, subject to the regulations of the community and supported by the community."

In Goesele vs. Bimeler, 5 *McLean*, 223 (the Zoar Society case), Judge McLean held that it was in effect a universal partnership.

> "The members called themselves the 'Separatist Society of Zoar.'
>
> "The name of the society was used as a designation of *the whole body*, the same as the assumed name of a firm to designate its partners. Individuality of ownership of the property then possessed by the members of the association was abolished, and also future acquisitions *for the common right of interest in the whole.*"

Is it not plain, then,

(I) That all the property conveyed to the trustees as individuals from outsiders vested in them an indefeasible title in fee simple, freed from all claims of the grantors.

(II) That all property conveyed to George Rapp and his associates who were the members of and constituted the Harmony Society by the individual members was a conveyance to all the other members, including Rapp, of the individual title, and the grantees were certain known persons constituting as members the Harmony Society and identified by their signatures to the agreements.

(III) That the trustees who held this property in trust for the society used the term Harmony Society just as a firm name is used to designate the members who composed it, and these members are known and easily identified.

It is useless to discuss the line of cases appellants cite, which includes Kain vs. Gibboney, 101 *U. S.*, 362, and all of which merely reiterate the old English rule that an unincorporated association, owing to the uncertainty of its members, cannot take a gift or grant. None of these cases have any bearing on the case at bar, for the reasons hereinbefore given. Each turned upon the question of the certainty of the grantees. Thus, in the Baptist Association vs. Hart, 4 *Wheaton*, 27, the grantees were said to be "the Baptist Association, that for ordinary meets at Philadelphia." In Kain vs. Gibboney, 101 *U. S.*, 363, the grantees in trust were defined in the bill as "for the benefit of the community of which I may be a member."

In all these cases the grantees were unknown and uncertain, while in the case in hand those declarations which were parts of the agreement constituting the society referred to a certain well known and easy of identification list of members who made up the society.

PUBLIC POLICY.

As we have shown *supra*, this court, the Circuit Court of the United States, the Supreme Court of Pennsylvania, Maine, Massachusetts, New York and Ohio, have all denied that such organizations are prohibited by or are against the law, and we only add here a thought derived from the Girard will case, when Judge Story, voicing the unanimous opinion of this court in 2 *Howard*, 83, in answer to the objection that the trusts in Girard's will were against public policy, said:

> "In considering this objection, the court are not at liberty to travel out of the record in order to ascertain what were the private religious opinions of the testator (of which indeed we can know nothing), nor to consider whether the scheme of education by him prescribed, is such as we ourselves should approve, or as is best adapted to accomplish the great aims and ends of education. *Nor are we at liberty to look at general considerations of the supposed public interests and policy of Pennsylvania upon this subject, beyond what its constitution and laws and judicial decisions make known to us.* The question, what is the public policy of a state, and what is contrary to it, if inquired into beyond these limits, will be found to be one of great vagueness and uncertainty and to involve discussions which scarcely come within the range of judicial duty and functions, and upon which men may and will complexionally differ; above all, when that topic is connected with religious policy, in a country composed of such a variety of religious sects as our country, it is impossible not to feel that it would be attended with almost insuperable difficulties and involve differences of opinion almost endless in their variety. We disclaim any right to enter upon such examinations beyond what the state constitutions and laws and decisions necessarily bring before us."

When we look at the judicial decisions in Pennsylvania we find the Common Pleas Court in 1835, and the Supreme Court of the state in 1836, distinctly announce that this society and the agreements organizing it were not against the policy of the state.

Schreiber vs. Rapp, 5 *Watts*, 360.

The society organized in Pennsylvania in 1805, bought a large tract of land and remained here until 1817 when it moved to Indiana, but returned to Pennsylvania in 1825, where it has ever since resided. The state has never interfered with it. Neither the executive or the legislature have in any way acted or legislated against it. Its members are all subjects and citizens, performing with alacrity their duties to the state and its municipal divisions.

Is it not rather presuming to ask this court in 1902, after over seventy-five years continuous life of this society, unbroken by a single criminal prosecution, to declare its tenets contrary to the policy of the state?

ALLEGED MISUSE OF THE MONEY OF THE SOCIETY.

The amounts of the donations to withdrawing members are reiterated in appellants' brief, without stating that the Feucht litigation and the settlement made with the Feuchts of over $5,000 each, and also with Hugo Miller, who was startled by that trouble, fixed the donation to practically all those who withdrew. Such settlements the master and both the lower courts held were

> "certainly prudent and, under the circumstances, for the best interests of the society."
> (Record, p. 158).

The fact that the Harmony Society was a partner in the Economy Savings Bank, and hence liable for its debts, is not disputed; yet the appellants insist that Mr. Duss, instead of making any effort to prevent the bank from closing, should have filed a bill in equity and had a receiver appointed for the bank. Imagine the Harmony Society, when its own credit was practically gone, filing such a bill; and think of the desolation to thousands of innocent depositors, and the probable wreck of the society itself by such a course of conduct.

SURVIVORSHIP.

The appellants put the sole question in this case as to where the property of the society would go if all the members were dead but one. This one they prophetically announce as Mr. Duss; and changing a little the charges in their bill that Mr. Duss and *others* were to share in the assets, they now allege Mr. Duss is to pose as the *sole* survivor and get it all for himself alone. Poetic justice would be subserved if such result did follow, for, as we have seen, there would have been no property to fight about had it not been for him.

Certainly the appellants would be the celebrants of the irony of fate if,—*sans* contributions, *sans* work, *sans* membership, even *sans* any honest interest in the society,—they could seek to ruin it, and in the end seize the property Mr. Duss has saved.

Put aside the fanciful question and consider the real one.

Do not all the members of the society at any one time constitute *the* society, and may they not do with their own what they please?

The answer is Yes, as we have before seen.

The case of Cummack vs. Edwards (appellants' brief 57), so much relied upon by them, is markedly different, and the difference is conspicuously shown by a sentence from Judge Chitty's opinion.

Compared with the facts of our case, Judge Chitty said as the point of that case:

> "Where a man provides a fund by way of trust for payment of a specified annuity to his widow during her life, and makes no further declaration of trust affecting the fund, the beneficial interest in the fund, or so much of it as is not required for payment of the annuity results to himself."

Now, compare this limited donation or payment for a specific purpose only with the words of the agreements of 1805, 1827, 1836 and see how radically they differ.

In the agreement of 1805 each gave his property to the society so that the society should hold it

> "as if he never had nor possessed it."

In the agreement of 1827 the conveyance was to Rapp and his associates and heirs,

> "all our property, real, personal and mixed, * * * as a free gift or donation for the benefit and use of the said association or community; and we do hereby bind ourselves, our heirs, executors and administrators to all such other acts as may be necessary to vest a *perfect title* to the same in the said association."

In the agreement of 1836 they all say:

> "Each individual is to be considered to have *finally* and *irrevocably* parted with all his *former contributions*, whether in lands, goods, money or labor; and the same rule shall apply to all future contributions, whatever they may be."

So too the sole purpose of the association in the Cummack case was to provide annuities for widows of the members, while in our case, as we have seen, the chief purpose was the accumulation of property. Judge Grier, in the Nachtrieb case, put the marked distinction between the Harmony Society and the one in the Cummack case thus:

The others contribute to give away for a specific purpose only while the Harmony Society

> "accumulated for themselves; they have, by joint labor, accumulated property of great value which they hold as joint owners."

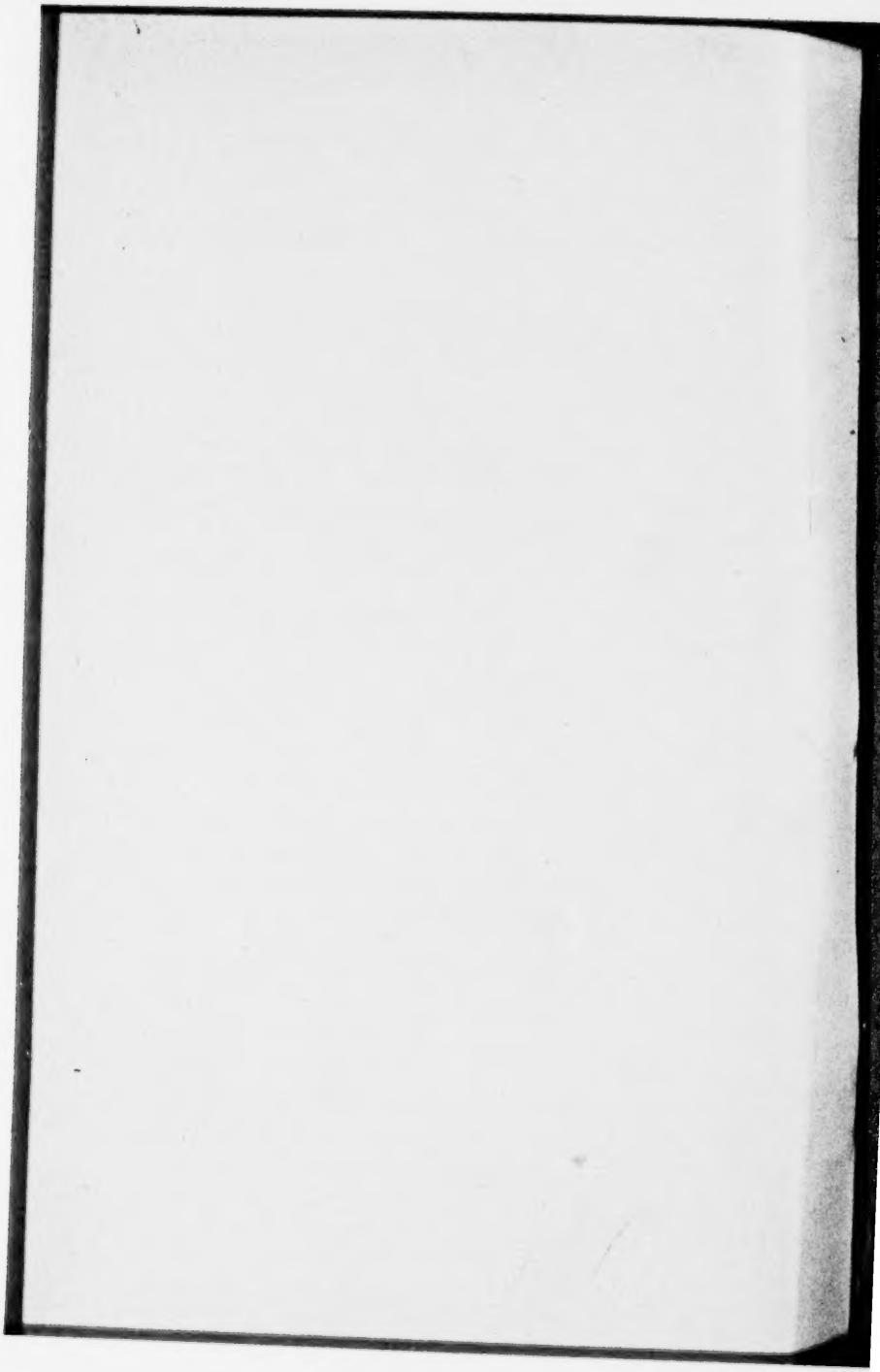
See also the language of the Court of Appeals of New York in the Oneida community case, 137 *New York* 346.

COSTS.

The appellants having failed to sustain a single allegation of the bill as to conspiracy and fraud were rightly mulcted in the costs. The excuse now given that under Judge Acheson's ruling on a preliminary question as to the cross-examination of Mr. Duss, that the appellants could not *then* go into alleged breaches of trust by him or his alleged personal misconduct, avail them nothing.

As a fact after the master was appointed the appellants were permitted to go into all alleged personal misconduct of his as charged in the bill.

JOHNS MCCLEAVE,
D. T. WATSON,
Attorneys for Appellees.



IN THE

Supreme Court of the United States

No. 237 October Term, 1904.

CHRISTIAN SCHWARTZ, *et al.*,

vs.

JOHN DUSS, *et al.*,

Petition for Re-Argument.

GEORGE SHIRAS, JR.,

S. SCHUYLER OTIS,

Solicitors for Petitioners.

SUPREME COURT
OF THE UNITED STATES
JAN 6 1905

SUPREME COURT OF THE UNITED STATES.

No. 38 OCTOBER TERM, 1902

CHRISTIAN SCHWARTZ, et al.

vs.

JOHN DUSS, et al.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Now come George Shiras III. and S. Schoyer, Jr., attorneys for the above named plaintiffs, petitioners, and respectfully pray this Honorable Court for a re-hearing of the above entitled cause for the following reasons, to wit:

First. This Court in its opinion says:

> **"The Master, and both the Circuit Court and the "Circuit Court of Appeals, found that the Society had "not been dissolved, either by consent of its members "or the abandonment of its purposes for which it was "founded. On account of this concurrence the *dis-"puted facts* involved in that finding, under the rules "of this Court and the circumstances of the record, we "do not feel disposed to review."**

Apparently plaintiffs' counsel have failed to make themselves clear on this branch of the case.

We have not intentionally asked that a single disputed fact be reviewed by this Court, although in the printed brief and oral argument certain facts were necessarily presented at length. The Master and the lower Courts in their conclusions of law, based upon such facts, were alleged to have erred in those conclusions. Upon these questions of law we have based our Assignments of Error and our oral and printed arguments. In the "Agreed Record" there has been printed all that relates to the questions under review.

For example: it is admitted that in 1892 a large number of the leading members of the Harmony Society filed a bill in Beaver County asking for a dissolution of the Society, for the appointment of a Receiver and the distribution of its assets; that shortly thereafter,—before and after said bill was withdrawn by amicable agreement,—Mr. Duss, the Senior Trustee, had his counsel draw up certain papers, marked Exhibits 1, 2, 3, 4, 5, 6, 7, 10, 12, 12½, in the "Agreed Record," (pages 235-246) wherein the signers thereof accepted money, land or both, in *discharge of their claims upon the assets of the Society*. Several of said exhibits show that the amount received was based upon a pro rata distribution according to the number of living members and what the Society would realize from its assets in case of liquidation (*vide e*. No. 2). At the time of filing the present bill, seventeen active members, comprising practically the whole Board of Elders and the Society's leading officers, had received on an average five thousand dollars a piece, and others were negotiating for their share.

Now the plaintiffs contend that an examination of these facts, and a construction of the deeds of settlement will lead to the following conclusions of law:—

First. That the depletion of the Society so that the membership only sufficed to fill the Board of Elders was a destruction of the "community" in a legal sense. The Master found that numbers were immaterial under the Articles of Association, and this made it possible for one or two members to constitute the "community" Upon this conclusion of law we allege error.

Second. That these settlements constituted a *liquidation* and recognition of *individual ownership in the surviving members,* and that a continuation of this system, necessarily provided a secret means of dissolution and the apportionment of the vast assets among such members, as was openly attempted by the Bill in Equity, referred to, praying for a dissolution. The Master held as a matter of law that these settlements were mere "donations." This conclusion of law we have also assigned as error, and have printed in our Record all the deeds, which the Master excluded from his Report, although considered of the greatest importance by the plaintiffs.

Had this Court held that the present plaintiffs possessed a proprietary interest it seems plain to us that the defendants under the above facts should have been restrained from further depletion of the assets of this Society, whether the Society was ended or not.

Again: in regard to the transfer of the remaining property of the Society to the Union Company, the facts show that the home of the Society and its vast acreage were conveyed to a corporation authorized to sell the same; that it was wholly managed by a Board of Directors whose duties are solely defined by the statute laws of the State of Pennsylvania, and that only one of these Directors was a member of the Society, so that the Board of Elders who now comprise the sole remnant of the alleged Society are wholly without authority to manage its temporal and spiritual affairs in accordance with the Article of Association. The Master held, as a matter of law, that such transfer was legal and not contrary to the laws or

usages of the Society. This seems like plain error for the Articles never contemplated such outside management or a complete destruction of its peculiar system of government and its doctrine of community of goods based upon Christian fellowship. Such conclusions by the Master, we submit, are ones of law, and reviewable by this Court.

Second. The Court in its opinion seems to deny proprietary reversionary interests in the trust properties in the petitioners for the following reasons:

1. Because none of the ancestors of any of the petitioners had ever contributed property to the Society:

2. Because if they had made such contribution they and their descendants were barred by the articles of 1836 from maintaining this proceeding:

3. That petitioners' contention constituted the members at once *donors* of the trust properties and *donees of each other*.

4. That the effect of such contention would exclude the descendants of those who had originally contributed the property of the Society from any participation therein.

Apparently petitioners' counsel have failed to impress the Court in their printed and oral arguments with their true contention, namely; that the bill is not filed against a *going* Society, or for specific contributions made individually by plaintiffs' ancestors; but upon the hypothesis that the Society has ceased to exist and that the trusts have terminated, and that therefore the trust properties revert to the donors, and that those donors consist of all signers of the Articles of 1836 and 1847 living, including the present membership and the heirs of those dying in the Society; that the interest of each of those donors in the property thus donated was equal by reason of the

conversion of all the property of the Society into a "joint and indivisible stock."

It is respectfully submitted that the petitioners have never claimed, as seems to be assumed in the opinion of the Court, that the members of the Society, as such, *were donees of each other.* Their contention is that as the creators of the trust fund they were *donors;* that the *Society,* as a *Society,* was the *donee,* for which, and for which only, the trust was created, and that the members, as such, were not *donees* at all, but were only entitled by contract, so long as the Society lived, to the maintenance and provisions for their physical welfare recited in the articles; although in the event of dissolution and the failure of the trusts, they as signers of the Article of 1847, are also in the class of donors and reversioners.

Third. Petitioners have contended that there is no provision in the Articles of October 31, 1836 (Record, page 224) or in any subsequent article which precludes the heirs of ancestors, who became jointly interested in the "joint and indivisible stock" by those articles created, from claiming a reversionary interest in the trust property upon *failure of the trust;* that the following provision of those articles is restricted to demands and claims for restitution of contributions which by pre-existing articles they were entitled to upon withdrawal from membership.

That provision is as follows:

> "3rd. Should any individual withdraw from the "Society, or depart this life, neither he, in the one case, "nor his representatives in the other, shall be entitled

"to demand an account of *said contributions,* whether "in land, goods, money or labor, or to claim anything "from the society as matter of right. * * *"

The *"said contributions"* referred to in the paragraph quoted are those contributions which had been subject to restitution upon withdrawal, as provided for in the Sixth Article of the Agreement of 9th of March, 1827, recited in the Articles of 1836, and which is as follows:

"And it would so happen as above mentioned, that "any of the undersigned should violate his or their "agreement, and would or could not submit to the laws "and regulations of the church or community, and for "that or any other cause should withdraw from the as- "sociation, then the said George Rapp and his asso- "ciates agree to refund to him or them the value of all "such property as he or they may have brought into "the community, in compliance with the first article of "this agreement, the said value to be refunded without "interest in one, two or three annual installments, as "the said George Rapp and his associates shall deter- "mine."

"And if any person or persons so withdrawing "themselves were poor, and brought nothing into the "community, yet if they depart openly and regularly, "they shall receive a donation in money, according to "the length of their stay and to their conduct, and to "such amount as their necessities may require in the "judgment of the superintendents of the association."

The evident intent was not merely to annul and make void that article in its entirety, but to bar any future claim for in-

dividual restitution of property theretofore contributed; and to convert property so contributed into "joint and indivisible stock" forever, including all future contributions whatever they may be, whether in land, goods, money or labor.

The provision quoted has never been repeated in any subsequent articles of the association; because by the creation of "joint and indivisible stock" and the conveyance of it by absolute title to Trustees for the use and benefit of the Society, any such provision became unnecessary, as no ***individual*** right of property therein thenceforth existed in any member so long as the Society continued to exist as a going Society. However, when the Society ceases to exist and the trusts have been defeated, the trust property thus created does revert to the present members, not as members but as donors, in common with the heirs of all other members donors who had signed the Articles of 1836 and 1847, barred by no provision in the Articles of 1836 and 1847, or of any subsequent articles of the Society. The trust fund this created and thus to revert, include all the property of the Society, whether the same consist of lands, goods, money or *labor or profits of labor.*

The Articles of October 31, 1836, drew a complete line of demarkation between the relation of members of the Society to its property existing prior to that date, and such relations existing after the date of the Articles of October 31, 1836. Before that date the property of the Society was held subject to the right of restitution to contributors; afterwards by virtue of those Articles of 1836, those rights of restitution were surrendered, and not only were provisions of previous articles, which had been prescribed for the protection of that right ab-

rogated, annulled and made void, but all such owners of the right of restitution voluntarily barred themselves from ever demanding an accounting of those contributions; and thereupon all the then existing property and all future property was to be held for the benefit and use of the Society forever, as "joint and indivisible stock."

We respectfully submit to the Court that petitioners' counsel have failed in their printed brief and oral argument to impress these contentions fully upon the mind of the Court.

Fourth. Counsel also submit to the Court that the finding of the Master that no contributions were made by the ancestors of the petitioners to the property of the Society is purely *a negative finding.* No testimony was offered by petitioners upon that point, because it was deemed and is now deemed to be outside of the issue and irrelevant. The bill is not filed against the Harmony Society.

Fifth. Counsel also call the attention of the Court in respect of the position expressed in the opinion of this Court that the successful contention of the petitioners would exclude the descendants of those who had originally contributed property to the Society, to the fact that the question involved was not considered either in their printed or oral argument. So far as the same may be deemed essential, counsel now present to the Court the statement that every person having any interest in the Society's property on October 31, 1836, entered into the Articles of October 31, 1836.

By the Articles of 1805 (Exhibit A, p. 218) and of March 9th, 1827 (page 221 of the Record) the only rights reserved to members in this connection were in favor of withdrawing members being restored to their contributions. The Society was a *going*, an *existing* Society, and therefore those who died in the Society left no transmissable rights to their descendants; those contributing members who withdrew from the Society got their contributions back and executed releases; those who were poor and contributed nothing to the Society, but withdrew, received donations and executed releases. Hence the signers of the Articles of 1836, embraced all who had any interest in the property of the Society.

But if there be any descendants of those who originally gave property to the Society who are not barred, the position of the petitioners is broad enough to include them as reversioners.

Sixth. The opinion of the Court seems to admit the existence of a trust under which the properties of the Harmony Society are held, but does not dispose of the question as to where those properties shall go in the event of the dissolution of the Society and the termination of the trusts; there being no provision anywhere for any remainder over, or for a system of tontine, or for a joint tenancy with right of supervisorship, the property being vested absolutely in trustees who expressly declare their trust to be for the benefit and use of the society.

The Trustees cannot hold it. The surviving members, as such, do not take it as survivors, and the society, being the only donee, has ceased to exist.

Seventh. Assuming however, that the Society is not in point of fact dissolved; that the trusts are in full efficiency; that the petitioners have no proprietary rights as reversioners of the trust funds, yet it is submitted that the bill should not be dismissed because the petitioners by virtue of their blood and kinship and heirship, have standing in equity to enforce and conserve the trusts which their ancestors had created from being wasted and devastated by the trustees, and the surviving members, the latter of whom have only a contract right of maintenance out of the income of those funds.

We respectfully submit that if the present plaintiffs and the class they represent are to be denied any relief, this Court sitting in equity, should in some way conserve the trust, if satisfied that the plaintiffs are correct in their contentions that the trust has failed through the active efforts of the defendants upon whom rest the duty of fostering it. If we, as the admitted next of kin belonging to a class that always, in the eye of law, stands as *prima facie* the successors to their ancestors' title are cut out by this trust, are we not as such entitled to know whether such trust is ended and if so to whom our ancestors' property shall go? Are the present defendants *by mere right of possession*, possessing no individual ownership under the trust to be permitted to violate its provisions, even to the extent of taking unto themselves the very property created by our ancestors towards which they contributed nothing, while we are powerless by reason of the same trust to either share in the assets or in any way conserve the same?

While this was a going Society the present plaintiffs never sought to interfere, but maintained the friendliest relations toward it; and now that they think that it is ended through no fault of their own, we respectfully contend that the many years of laborious litigation and the burdensome costs imposed upon them, warrants this Court in so construing this trust as

not to make it possible for the survivors of this Society to take what does not belong to them, when in good faith the present plaintiffs have only sought for the determination of a question of law never heretofore decided. That as the present Court has itself been divided on the question of the proprietary right of the heirs of deceased members, in case of dissolution of the Society, we would respectfully suggest that such a contention was not without sufficient merit to warrant the present plaintiffs in seeking a determination thereof. It may be that in case of a re-argument this Court may formulate such a decree as will conserve this trust, or if convinced that the Society is ended will indicate to whom the property shall go.

Counsel respectfully recall to the attention of the Court the great value of the properties involved; the importance of the determination of titles and of the rights of descendants, and suggest that upon re-argument, if it be granted, they may cause the grounds of their contention to be more clearly and logically presented than in their former printed and oral arguments.

The attention of the Court is respectfully called to the fact, that even if the ancestors of petitioners had contributed no property to the Society, it is clear that neither of the eight surviving members has contributed any; and that most of them joined the Society as late as 1890, and none of them prior to 1889. Yet apparently, these survivors, non-contributors as

they are, have the uncontrolled enjoyment of this vast property, without supervision, representing as it does the property and profits of labor of several generations of members, now deceased, covered by the terms of a trust which it is difficult to see, ever contemplated such a result.

And your petitioners pray that an order may be made for the hearing of re-argument in this cause on a day to be appointed by the Court, and at such time and upon such points as the Court may direct.

GEORGE SHIRAS, III.,
S. SCHOYER, JR.,
Attorneys for Petitioners.

We hereby certify that this petition for a re-hearing is presented in good faith, and we believe it is on meritorious grounds.

GEORGE SHIRAS, III.,
S. SCHOYER, JR.,
Attorneys for Petitioners.

Supreme Court of the United States.

No. 38.—October Term, 1902.

Christian Schwartz et al., Petitioners, vs. John S. Duss et al. } On writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[October 27, 1902.]

Mr. Chief Justice Fuller, with whom concurred Mr. Justice Brewer, dissenting.

Assuming the validity of the trusts, the questions appear to be, whether the condition of things has resulted in failure to carry out, and of ability to carry out the principles and purposes of the society, and the defeat of the trusts; and, if so, whether the destination of the corpus of the trust property has, thereupon, become such that complainants or some of them have a *locus standi* to ask relief in a court of equity.

The courts below held that the society still existed in law and in fact, and that this case was not one of "dealing with the assets of a defunct or dissolved association;" or in other words, that the trusts had not been defeated; and the decrees rested on this conclusion. If erroneous, the inquiry then arises, to whom does the corpus of the trust property go in the event of the defeat of the trusts.

A brief recapitulation of the facts is necessary to indicate the grounds of my inability to concur in the opinion and judgment of the court.

In 1803, George Rapp and others located at Harmony, Butler County, Pennsylvania, removed in 1814 to Indiana, and returned in 1825 to Pennsylvania, and located at Economy, in Beaver County. They formed a society or association, which, as said by the Circuit Court of Appeals, "was organized upon the principle of community of goods and land ownership.

The members of the said society who had brought with them from Wurtemburg, money, combined their funds and all their property in common, they lived as members of a common household and each member enjoying, alike with every other, the fruits of their common labor in equality and brotherhood. The occupation or business of the said society was agriculture, except in so far as it was necessary to manufacture shoes, clothing and other necessaries for the community. The members of the said society obeyed George Rapp as their spiritual and temporal leader and ruler. About the year 1807, the community promulgated the doctrine of celibacy as being necessary for the success of a communistic society."

Although styled "George Rapp and his associates," Rapp was, from the beginning to his death in 1847, the absolute and exclusive ruler in whom all power was vested. Members were admitted by adoption and on adoption conveyed and transferred all their property, real and personal, to "George Rapp and his associates," and after 1836, to the Harmony Society for the use and benefit of the community.

By article 5 of a written agreement of February 5, 1805, if for any cause one or more of the subscribers should leave Harmony, "George Rapp and his associates" promised to refund the value of his or their property brought in, while those who brought nothing in might receive a donation.

The second agreement was dated January 20, 1821, and the third, March 9, 1827.

The first branch of the preamble of this agreement of 1827, read: "Whereas, By the favor of Divine Providence, an association, or community, has been formed by George Rapp and many others, upon the basis of Christian Fellowship, the principles of which being faithfully derived from the sacred Scriptures, include the government of the patriarchal age, united to the community of property adopted in the days of the Apostles, and wherein the single object sought is to approximate, so far as human imperfection may allow, to the fulfillment of the will of God, by the exercise of those affections, and the practice of those virtues which are essential to the happiness of man in time and throughout eternity."

By the first article the subscribers gave, granted and forever conveyed "to the said George Rapp and his associates, their heirs and assigns, all our property, real, personal and mixed, whether it be lands and tenements, goods and chattels, money or debts due to us, jointly or severally, in possession or in remainder or in reversion, or in expectancy, whatsoever or wheresoever, without evasion, or qualification, or reserve, as a free gift or donation, for the benefit and use of said association or community."

Members were to be obedient to superintendents, were bound to promote the interests and welfare of the community, and were to receive support and instruction.

The sixth article (almost identical with article 5 of 1805,) was as follows: "And if it should happen as above mentioned, that any of the undersigned should violate his or her agreement, and would or could not submit to the laws and regulations of the church or community, and for that or any other reason, should withdraw from the association, then the said George Rapp and his associates agree to refund to him or them the value of all such property, without interest, as he or they may have brought into the community in compliance with the first article of this agreement, and the said value to be refunded in one, two or three annual installments, as the said George Rapp and his associates shall determine. And if the person or persons so withdrawing themselves were poor, and brought nothing into the commun-

ity, yet if they depart openly and regularly, they shall receive a donation in money, according to the length of their stay and to their conduct, and to such an amount as their necessities may require, in the judgement of the superintendents of the association."

The Master found, among other things, as follows:

"Prior to his death in 1834, Frederick Rapp, a member of the society, had been the business agent of the society, transacting its external business. After his death the members of the society on July 5th, 1834, executed a power of attorney to George Rapp—Exhibit No. 85 in evidence—constituting him general agent of the society in all its temporal affairs, with power to appoint agents and substitutes under him. Under this power, he on the same day appointed Romulus L. Baker and Jacob Henrici his substitutes. This power of attorney was signed by four hundred and two members of the association, and with the substitution and not including the signatures, is as follows:

'Know all men by these presents: Whereas, Frederick Rapp, of Economy, in Beaver County, State of Pennsylvania, recently deceased, was for a series of years the agent in temporal affairs of the Harmonie Society, carrying on in his own name all the external business of said society and taking to himself the titles to real estate as well as the evidence of claims arising out of the various transactions of said society;

'And Whereas, By an instrument dated the 20th of July, 1825, under the hand and seal of said Frederick, he solemnly and irrevocably declared that all the property, real, personal and mixed, which then was or hereafter might be in his possession or enjoyment, or the title to which he then held or might hereafter hold, was and should be considered the property of the said society, in which he the said Frederick had no absolute interest whatsoever; 'And Whereas, The lamented death of the said Frederick Rapp renders it indispensable that a new agent should be appointed by whom the temporal affairs of the society may continue to be managed in a mode which has proved convenient and satisfactory;

'Now, Therefore, Be it known. that we the undersigned, constituting said Harmonie Society, do hereby nominate and appoint George Rapp, of Economy, in the County of Beaver, the general agent of said society in all its temporal affairs.

'The powers intended to be conferred on the said George Rapp are hereby declared to be as follows, that is to say:

'1. To ask for, demand and receive from each and every bank or other incorporated company, partnership, or individual person or persons, the amount which may be due therefrom, in the way of principal, interest or dividend to the said Harmonie Society, or to Frederick Rapp, whether the same be evidenced by judgment, mortgage, bond, certificate of stock, note, bill of exchange, deposit of money, book account, verbal promise, sale or barter, loan or money, or arise in any other manner whatsoever, the check, order, receipt, acquittance or release of the said George Rapp to be as effectual as if executed by all and each of us, or as if it had been executed by the said Frederick Rapp in his life time.

'2. To execute and receive all deeds and conveyances, in fee simple or otherwise, on behalf of the society, whether the title thereto stand in the the name of the society or of Frederick Rapp or of George Rapp and

associates. The act of the said George Rapp relative thereto to be as valid and sufficient as if executed by us or by the said Frederick Rapp in his life time.

'3. To carry on, by himself or through the agents whom he is hereinafter authorized to appoint, all the dealings and traffic of said society of every description.

'4. To constitute and appoint an agent or agents under him as he may deem advisable, imparting to such substitute or substitutes, should he think fit the whole or any portion of the authority hereby conferred on himself. He may also at his pleasure revoke such instrument of substitution whenever he may think such revocation called for by the interests of the society.

'5. It is distinctly understood that in accepting and acting under this power the said George Rapp disclaims all personal interest other than that of a member of said society in the present resources or future earnings of the society, in conformity with the principles and terms upon which the Harmonie Society was originally founded, as fully and effectually as was done by the late Frederick Rapp in the instrument already averted to, dated 20th July, 1825, the terms of which instrument the said George Rapp hereby adopts for himself and repeats in every particular.

'In witness whereof the undersigned members of the Harmonie Society who constitute said society, have hereunto set their hands and seals at Economy, in Beaver County, this fifth day of July, in the year of our Lord, eighteen hundred and thirty-four.'

(Signatures.)

(Acknowledgment.)

'By virtue of the authority expressed in the fourth article of the foregoing power of attorney, I do appoint and substitute in my place and stead, Romulus L. Baker and Jacob Henrici, of Economy, Beaver County, Pennsylvania, to act as general agents of the Harmonie Society aforesaid, jointly or severally in my name, and for the use of the said society, to do and perform all acts and things which as the general agent of said society, I am authorized to do. It being distinctly understood, however, that in accepting and performing the office and business of general agents of the said society, the said R. L. Baker and Jacob Henrici shall neither acquire nor claim any personal interest in the present resources or future earnings of the said society other than that of a member of the said society, agreeably to the plans and terms of association, but shall be considered as exercising the same trust mentioned in a declaration of trust signed by Frederick Rapp on the 20th day of July, 1825, and referred to in the foregoing power of attorney to George Rapp.'"

Signed, sealed and delivered by George Rapp.

October 31, 1836, the following agreement was executed by 391 members of the society and afterwards accepted and adopted by 33 others:

"Whereas, The Harmonie Society, consisting of George Rapp and many others, now established in the town of Economy, in Beaver County, Pennsylvania, did on the 9th of March, 1827, enter into certain articles of association, of which the 6th in number is as follows, viz: [here follows that article.]

'And whereas, The provisions of the said 6th article, though assented to at the time, manifestly depart from the great principle of a community

of goods and may tend to foster and perpetuate a feeling if inequality at variance with the true spirit and objects of the association;

'And whereas, The principle of restoration of property, besides its pernicious tendency, is one which cannot now be enforced with uniformity and fairness, inasmuch as the members of the association in the year 1816, under a solemn conviction of the truth of what is above recited, did destroy all record and memorial of the respective contributions up to that time;

'And whereas, Continued happiness and prosperity of the association, a more intimate knowledge of each other, have removed from the minds of all menbers of the least apprehension of injustice and bad faith;

'Now therefore, Be it known by these presents that the undersigned, with a view to carry out fully the great principles of our union, and in consideration of the benefits to be derived therefrom, do hereby solemnly enter into covenants, and agree with each other as follows:

'1st. The said 6th article is entirely annulled and made void, as if it had never existed; all others remain in full force as heretofore.

'2nd. All the property of the society, real, personal and mixed, in law or equity, and howsoever contributed or acquired shall be deemed now and forever joint and indivisible stock. Each individual is to be considered to have finally and irrevocably parted with all his former contributions, whether in land, goods, money or labor; and the same rule shall apply to all future contributions whatever they may be.

'3rd. Should any individual withdraw from the society, or depart this life, neither he in the one case nor his representatives in the other, shall be entitled to demand an account of said contributions, whether in land, goods, money or labor, or to claim anything from the society as a matter of right. But it shall be left altogether to the discretion of the superintendent to decide whether any, and if any, what allowance shall be made to such member or his representatives as a donation.

'Invoking the blessing of God on this sacrifice of all narrow and selfish feelings to the true purposes of the association and to the advancement of our own permanent prosperity and happiness, we have signed the foregoing instrument, and affixed thereunto our respective seals, at Economy, this 31st day of October, 1836.'"

George Rapp, sole patriarch and ruler, died in 1847, and thereupon, in that year certain articles were subscribed by two hundred and eighty-eight persons as the "surviving and remaining members of the Harmonie Society, and constituting the same." These articles created and nominated a Board of Elders of nine members, with the power of filling vacancies, and a Board of Trustees, consisting of two members of the Board of Elders, which had power to fill vacancies in the trusteeship. Instead of a single patriarch, a dual patriarchy was substituted, and those boards alone had the power over and control of the property.

The eighth article was as follows:

"It is hereby distinctly and absolutely declared and provided that all the property, real, personal and mixed, which now or hereafter shall be held or acquired by any trustee or trustees, or person under them, is and shall be deemed the common property of said society, and each trustee

now or hereafter appointed hereby disclaims all personal interest in the present resources and future earnings of the society, other than that of a member thereof, according to the articles of association hereby established and continued, and according to the present government."

From these documents it appears that prior to October 31, 1836, all contributions of property were for the use and benefit of the community on the condition that any member withdrawing was to receive back the value of his contributions.

But that by the contract of 1836, the property then held in trust was no longer held subject to reclamation on the basis of original contribution, but the whole aggregate was made a common fund in which each member was equally interested, subject to the previously existing trust for the use and benefit of the society; that the corpus of the trust property included all future contributions, accretions and accumulations; and that the then and subsequently admitted members occupied the relation of donors and the society, as a society, of donee.

The joint and indivisible stock embraced all present and future property subject to the trusts declared in the articles of 1827, which were reaffirmed in 1836, except the sixth article. That trust was described "as a free gift or donation for the benefit and use of the said association." And by the agreement of 1847, the property was to be held and deemed the common property of said society, and each trustee disclaimed all personal interest therein "other than that of a member thereof."

If then the trusts are defeated I concur in the view that the trust property must go either to the owners or donors living, and to the heirs and legal representatives of those who are dead, by way of resulting trust; or to the surviving members of the society as joint tenants with right of survivorship, or by way of tontine.

It is true that the third clause of the agreement of 1836, provided that on withdrawal, or death, no member, or his representatives, should be entitled to an account or "to claim anything from the society as matter of right." But that clause referred to the society as a going concern, and this bill is not filed against the society, but proceeds on the ground of the termination of the trusts and the existence of a condition of things demanding the winding up of the society's affairs.

And if the system of patriarchal government has been abandoned; if for the communistic scheme, a capitalistic scheme has been substituted; if the society has become a trading community and lost all its distinctive attributes; if it is undergoing the process of liquidation; if all its property and assets have passed to a trading corporation and the power of carrying out its original principles has departed; if its membership has become practically incapable of perpetuation; it follows that the trusts have been defeated and the society ended to all intents and purposes.

Early in 1890, John S. Duss and two others, employes but not members of the society were elected to fill vacancies in the Board of Elders.

In April, 1890, certain articles were executed, the number of members being stated to be 45.

The Junior Trustee having died, John S. Duss was elected to fill the vacancy, and soon after, with his wife and children, took possession of the official residence of the society. In 1892 the Senior Trustee died, and Duss was elected to that position, one Sieber, the town constable, who had a wife, being elected Junior Trustee. Later in that year other articles were entered into, describing the then number of members as 37.

In February, 1893, certain members of the society filed a bill for its dissolution, the winding up of its affairs and the distribution of its assets

While the bill was pending, seventeen members received from the assets money and property to the amount of something over one hundred thousand dollars, and gave quit-claims and acknowledgements of full satisfaction of their interest or share in the property of the society. The grantors in nearly all of these instruments acknowledged in consideration of the money paid or land conveyed, that he or she does "hereby release, cancel and discharge any and all claims whatsoever, which I, my heirs, assigns or lawful representatives, may or could ever have against said society or its trustees, its property or assets, or any part thereof, I hereby declaring all such claims to be fully compensated, settled, released and discharged;" and, after reciting the various properties and assets, "I am entirely satisfied to accept as my full share and interest therein," &c.

Two of the deeds contained this paragraph: "While it may be that said society may have and be the possessor of several hundred thousand dallars worth of property after paying all debts, I am entirely satisfied to accept as my full share therein the sum of —— thousand dollars."

After these settlements began the bill was dismissed by consent.

In January, 1894, a corporation styled the Union Company was organized, under the State statute, "for the purpose of the purchase and sale of real estate, or for holding, leasing and selling real estate," its business "to be transacted in the borough of Beaver, county of Beaver, State of Pennsylvania."

On April 11, 1894 seventeen persons, purporting to be all the then members of the society, executed a paper stating: "We the members of said Harmonie Society, do each hereby express our consent with and request that John S. Duss and Gottlieb Riethmuller, the present trustees of said society, shall forthwith sell, transfer and convey to the Union Company, a corporation duly created and organized under the laws of the State of Pennsylvania, all the lands, tenements and hereditaments situated in the Allegheny and Beaver Counties, Pennsylvania, now owned and held by said trustees for the benefit of the said society, to the end that all said

lands, tenements and hereditaments may be owned, held and managed by said incorporated company, and be sold and otherwise disposed of from time to time in pursuance of proper corporate action as may be determined by the directors and officers of said incorporated company.

The capital stock of said incorporated company, however, to be owned and held by the said trustees for the benefit of the society, in accordance with, and on the terms and conditions of the articles of association of said society and the ratifications and modifications thereof, as the same now exists, to the extent of three hundred and ninety-seven thousand five hundred ($397,500) dollars, out of a total capital of four hundred thousand ($400,000) dollars."

The vast property of the society was conveyed to the Union Company, and the stock of that corporation assigned to the trustees.

Since April 11, 1894, nine of the seventeen subscribers have died, leaving eight, consisting of John S. Duss and his wife, one Gillman, 77 years of age, and unable to read or speak English; and five women of the ages of 80, 77, 58, 54, and 47, respectively.

Duss and Gillman became the sole remaining male members of the society and the women, with the exception of Mrs. Duss, were mostly old, infirm or ignorant.

No new member has been admitted since 1893. It is suggested that this was because none desired admission. This may be so, and this would explain the diminishing of over five hundred members in 1827 to two hundred and eighty-eight in 1847, and forty-five in 1890. But the result is the same. The eight remaining cannot reasonably be held to represent the great communistic scheme which the Wurtembergers of 1803 sought to found on "the basis of Christian Fellowship, the principles of which being faithfully derived from the sacred Scriptures include the government of the patriarchal age, united to the community of property adopted in the days of the Apostles, and wherein the single object sought is to approximate, so far as human imperfection may allow, to the fulfillment of the will of God, by the exercise of those affections, and the practice of those virtues which are essential to the happiness of man in time and throughout eternity."

As the membership diminished the wealth increased, but not from contributions by new members, and operations were carried on by hired labor.

Not one of the eight contributed to the three or four millions of property accumulated. It is conceded that Duss alone is the active member. But he is not the society, nor does the society in respect of its avowed principles any longer exist.

Moreover the transactions by which seventeen members of the society, not old and infirm, but vigorous and capable, were bought out, were in themselves acts of liquidation. It is idle to say that these payments

were "donations" to withdrawing members. They were purchases, in terms, and in effect. They were settlements by agreement instead of through litigation.

Finally, substantially the entire property of the society and its affairs have been turned over to a corporation created under the laws of Pennsylvania, authorized to purchase and sell land. This corporation has none of the powers confided by the articles of 1847, to the Board of Elders and the Board of Trustees. It has no power to feed, lodge, maintain and support, or to care for the spiritual welfare of members of the society or to perform any of the duties imposed upon the boards. The trustees have no distinct title to the society's property, but only the rights pertaining to the stock of the Union Company. All the industries carried on in Economy are carried on by tenants and lessees of the Union Company, and the society has ceased to possess the power to carry out the purposes for which its property was accumulated.

The affairs of the Union Company must be wound up under the State statutes in that behalf, and proceeds derived from the lands by sale or otherwise would go to the stockholders by way of dividends. The legal effect of the transaction was the same as a sale, out and out, for cash, and it was irrevocable. And this point so arises on the record that it must be disposed of as matter of law.

The master found, as matter of law, that the society continued to exist because the surviving members had not formally declared it to be dissolved, and that the purposes and principles of the society could not be held to have been abandoned unless by the formal action of all its members. But this could only be so on the assumption that the scheme of the trust created a joint tenancy with the right of survivorship, or a system of tontine; and that a single surviving member might be the society although to the integrity of a community, numbers are essential. By the articles neither the members, nor the Board of Elders, nor the Board of Trustees, nor all together, possessed the power voluntarily to formally dissolve the association, and it is for a Court of Equity to adjudge whether a condition of dissolution or a condition requiring winding up is or is not created by acts done or permitted.

Such being, in my opinion, the condition here, the trust property must go, as I have said, either to the surviving members as joint tenants with right of survivorship, or by way of tontine; or to the owners or donors living, and to the heirs and legal representatives of those who are dead by way of resulting trust.

Appellees contend for the first of these propositions. Their counsel says in his brief: "It is the society, as a society, which owns this property. It is the entire body as one whole. If at any time the society did dissolve, its property would go to the persons who then were its members.

No one else has any legal or equitable claim to it except those members. To them, and to them alone, it would belong, and among them it would be divided."

It is inconceivable that the creators of the trust contemplated any such result, when they sought to perpetuate Christian fellowship by the renunciation of their property.

The present membership has shrunk to eight members, less than enough to fill the Board of Elders, and that board consists of Duss and his wife; an old man and five women, aged or ignorant. Practically Duss is the last survivor and he claims the ownership of this vast estate as such survivor. By the articles no period was fixed for the termination of the life of the society. There is no remainder over, nor provision of any kind for the disposition of the trust estate in the event of the society's extinction.

Joint tenancy with survivorship or tontine excluding all but living members and casting accumulations on the survivor, are neither of them to be presumed. They are the result of express agreement and there is none such in these documents.

On the contrary, this property was held in trust for the use and benefit of the society as a society, and not for the individual members. The trust was for the use and benefit of the society in the maintenance of its principles as declared by its constitution and laws. When the purposes of the society were abandoned, or could not be accomplished, or the society ceased to exist, the trust failed, and the property reverted by way of resulting trust to the owners, who subjected it to the trust, living, and to the heirs and legal representatives of those of them who are dead.

This conclusion does not involve the assertion of a reversion secured by the express terms of the contracts, but rests on the familiar principle of equity jurisprudence that when the trust clearly created by the documents terminated a resulting trust arose to the grantors or donors or their heirs. The distinction is thoroughly elucidated by Mr. Justice Gray in *Hopkins* v. *Grimshaw*, 165 U. S. 342. It was there said, among other things:

"But the trust was restricted, in plain and unequivocal terms, to the particular society to be benefited, as well as to the purpose of a burial ground, adding (as if to put the matter beyond doubt) 'and for no other purpose whatever.' The trust would end, therefore, at the latest, when the land ceased to be used as a burial ground and the society was dissolved. . . .

"In the case at bar, the trust created by the deed having been terminated, according to its express provisions, by the land ceasing to be used as a burial ground, and the dissolution and extinction of the society for whose benefit the grant was made, there arises, by a familiar principle of equity jurisprudence, a resulting trust to the grantor and his heirs, whether his conveyance was by way of gift, or for valuable consideration."

The titles held by the trustees in this case were held for the benefit and use of the society in the maintenance of its principles. When the purposes of the trusts failed the property reverted, not because of special

provision to that effect, but because that was the result of the termination of the trusts.

Complainants, or some of them, are the heirs and next of kin of members who signed the articles of 1836 and 1847, and who died in fellowship. The service of one of these families is said to aggregate three hundred years of unrequited toil. They are entitled to invoke the aid of the court in the winding up of this concern, and these decrees ought to be reversed.

I am authorized to state that Mr. Justice BREWER concurs in this dissent.

True copy.

Test:

Clerk Supreme Court, U. S.

Supreme Court of the United States.

No. 38.—October Term, 1902.

Christian Schwartz et al., Petitioners, vs. John S. Duss et al. } On writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[October 27, 1902.]

This suit was brought for the distribution of the property and assets of the Harmony Society, which the bill alleged had ceased to exist. The bill also prayed for an injunction against John S. Duss to restrain him from in anywise dealing with the property of the society, and also for a receiver. The bill was exceedingly voluminous. It stated the origin and principles and plan of government of the society; that many industries were started and conducted by it, including a savings bank; the town of Economy, Pennsylvania, founded by it; and that its acquisitions, including 3,000 acres of land in the city of Pittsburg, amounted, in 1890, to upwards of $4,000,000; and "all of said possessions up to and until the grievances hereafter complained of, were scrupulously used for the benefit of all its members and for the advancement, benefit and continuation of the society;" that until those grievances the society, "from the period of its inception until a recent date, adhered rigidly to its plan of government and became illustrious and highly respected by reason of its sincere advocacy of the equality of man, its espousal of the highest principles of Christianity, and its honesty and benevolent administration of all public functions, whether in the management of its internal affairs or in its many transactions with the citizens of Western Pennsylvania."

The bill also averred that the society "but once in a period of ninety years suffered from serious internal disorder," which arose from the induction into the society of one Count De Leon, his artifices and subsequent secession. That in 1890 there "began a second conspiracy, the results of which overturned and destroyed the entire government of the society, wasted nearly its entire wealth, depleted its membership to a few aged and infirm women, and placed the management of the society and the control of its remaining assets in the hands of one man and certain associates and confederates, within and without the ranks of the society."

That the acting and directing mind of the conspiracy was John S. Duss, and he obtained his power as follows: In 1847 a plan of regulation and government of the society was adopted, by which its internal affairs were managed by a "board of elders," composed of nine members, and its external affairs were managed by a "board of trustees," composed of two

members. Romulus L. Baker and Jacob Henrici were chosen the first board of trustees. Baker died in 1868, and Henrici and Jonathan Lenz became the board of trustees; the latter was succeeded upon his death in 1890 by Ernest Woelful; Woelful also died in 1890 and Duss became his successor. Henrici died in 1892, and one Samuel Sieber was appointed, and on his retirement from the society Gottlieb Riethmueller, a relative of Duss, was elected trustee. At the time of the filing of the bill Duss and Riethmueller were trustees.

The bill detailed the acts and purposes of Duss at great length. It is, however, enough to say that the bill alleged that he became senior trustee and a member of the board of elders, and conceived the purpose of wrecking and dismembering the society, and attempted to execute such purpose. That the condition of the society gave him opportunity; that he caused the expulsion of at least one member, and induced or paid others to withdraw. That the increase in the society could only be through the admission of new members, and he directed that no new members be elected under any circumstances whatever, and as a result thereof the said Duss and Susie, his wife, were the last members admitted in the four years preceding the filing of the bill.

That he entered into certain arrangements with one Henry Hice and John Reeves, of the town of Beaver, Pennsylvania, by which he used $1,000,000 of the society's money without the knowledge or consent of its members "to pay off the alleged indebtedness of the Economy Savings Bank, of which said Hice and Reeves were the principal officers," though at the time he knew that the bank was wholly insolvent by reason of the overdrafts made by said Hice and Reeves, and although he knew that they had caused a loss to the society of over $2,000,000, "as officers and stockholders in said bank, and officers and stockholders in the Beaver Falls Cutlery Works and File Works, the debtors of said bank;" that he had not sued to recover back the money, but, on the contrary, had abetted them in obtaining further assets of the society.

That in pursuance of his scheme to defraud the society and to pay the indebtedness of the Economy Savings Bank, and for paying off claims upon which the society was only partly liable, if at all, he and his co-trustee Henrici executed a mortgage for the sum of $400,000 upon the real estate of the society, but that Henrici at the time of its execution "was in *articulo mortis*, and wholly beyond any power of comprehension of his act." And on the — day of June, 1893, he caused to be executed another mortgage, without the knowledge or consent of the members, for $100,000, bearing interest at six per cent, upon the land described in the former mortgage, to raise a fund "wherewith to secretly secure and induce removal of those members most likely to inquire into the validity or propriety of his conduct as trustee."

It was averred that the society had certain dividend paying stocks which Duss, in pursuance of his scheme, disposed of without the knowledge of any member of the society, except possibly his wife, and Gottlieb Riethmueller. The names of ten persons were stated, who[illegible], it was alleged, Duss, "by representation, coercion and the payment of large sums of money," were induced within two years preceding the commencement of the suit to withdraw from the society, and that he was endeavoring to compel remaining members "to depart by means of intimidation and oppression."

That the membership of the society was reduced to eight persons, none of whom were aware of the actions of Duss, or were consulted by him.

"That on the 12th day of April, 1894, the said Duss, without any authority from the members of the Harmony Society, and in the utmost disregard to his trust, secretly entered into an agreement with said Hice, Reeves and one James Dickson, whereby he, the said Duss, agreed to convey the town of Economy, the surrounding properties and certain other lands of the Harmony Society, situate in Allegheny County, to the Union Company, an alleged corporation created under the laws of the State of Pennsylvania. And your orators allege that a conveyance has been made by said Duss for the lands as aforesaid, and that the same was made without the knowledge of your orators or any members of the said society, excepting possibly Susie C., wife of said Duss, and Gottlieb Riethmueller. That by the said pretended conveyance and sale of the home of the Harmony Society and its other properties, the said Duss has attempted to wholly terminate the existence of said society, not only as to the government thereof by the board of elders and by the members, but also as to the ownership of any property. That the said Union Company, in addition to said Duss and Riethmueller, is composed of said Hice and Reeves, debtors of the said Harmony Society, as hereinbefore stated, and one James Dickson, the private bookkeeper and confidential agent of said Duss, whose interest in said corporation was acquired by gift from said Duss.

"That your orators are advised that it was not competent for the said trustees to convey said properties to the said Union Company, but such transfer was a breach of trust and wholly invalid."

It was further averred that the principle of equality had been departed from. That Duss and his family enjoyed every luxury, while the aged and infirm members were obliged "to be content with the bare necessaries of life, awarded with grudging, stinting hands."

And it was finally averred—

"That recently said Harmony Society has become dissolved as aforesaid; that all of its purposes and practices established as aforesaid by the founder of said society and by the ancestors of your orators have been abandoned; that the pursuit of agriculture no longer exists in said society; that its chief assets, consisting of bonds, stocks and other securities, and the town of Economy, with its buildings and the adjacent lands of said society, consisting of some 3,000 acres, and which constituted the basis of organization and business of said society, have been sold and conveyed away by the said Duss as aforesaid in fraud, however, of the rights of your orators and their co-tenants, and that by reason of the facts hereinbefore

set forth your orators and the said last members, except the said Duss and wife, are now tenants in common of all said lands and tenements, and entitled to partition thereof in proportion to their respective interests.

"That for some time past the members of said Harmony Society have been retiring therefrom and have received the amount of their interest in said association in the land or money, or both, the land being set apart in severalty to them, and have released all of their rights and interests in said association in consideration for such payment or conveyance to them, and that by said retirement and withdrawal the membership of said association has been reduced to the persons hereinbefore named members; that by common consent this association has ceased to exist as an association, and that if the property thereof has ever been impressed with a trust (which your orators deny, as being contrary to public policy and void in law or equity), such trust has wholly ceased, and the assets of such dissolved association have reverted to the donors thereof, among whom were the ancestors and intestates of your orators as hereinbefore fully set forth."

Duss, Hice, Reeves and the Union Company answered separately. The other defendants joined in an answer. By agreement of the parties the case was referred to a master, with "authority to hear and take all the testimony, and to find all the issues of law and facts, and to report the testimony and such findings to the court, and if the report of such master shall suggest a decree that the plaintiffs or any of them are entitled to an account against the defendants or any of them, and the same be confirmed by the court, then the case shall be referred again to the master, to state such an account and report thereon to the court."

Under the orders of the court the master considered the following questions:

"First. Have the plaintiffs, or any of them, such a proprietary right or interest in the property and assets of the Harmony Society as entitled them upon the dissolution of the society to any part of or share in such property or assets or as entitles them to the account prayed for in the bill?

"Second. Has the Harmony Society been dissolved by the common consent of the members or by an abandonment of the purposes for which it was formed?"

On both propositions the master reported adversely to the claim of the petitioners, and recommended a decree dismissing the bill. His conclusions of fact and law were approved and accepted by the Circuit Court, and a decree entered dismissing the bill. The decree was affirmed by the Circuit Court of Appeals. The case was then brought here by certiorari on petition of the plaintiffs in the Circuit Court. Other facts will be stated in the opinion.

Mr. Justice McKenna delivered the opinion of the Court.

Two questions were submitted to the master: (1) Have the plaintiffs such a proprietary right or interest as would entitle them upon the

dissolution of the society to share all its property or assets, or which entitles them to an accounting? (2) Has the society been dissolved by consent or by an abandonment of the purposes for which it was formed? A negative answer to either of the propositions determines the controversy against petitioners, and both were so answered by the master and by the Circuit Court and the Circuit Court of Appeals. The case, therefore, seems not to be as broad or as complex as presented in the argument of counsel. The case is certainly clear from any disputes of fact, and we may dismiss from consideration the accusations against Duss, not only as to his motives in joining the society, but also as to his motives and acts as a member and officer of it. We are concerned alone with the legal aspect and consequences of his acts and those of his associates. They, however, pertain more particularly to the second proposition.

This is not the first time that the Harmony Society has been before the courts. Its history has been recited and its principles characterized and defined, not only by the Supreme Court of Pennsylvania, but by this court. (*Schriber* v. *Rapp*, 5 Watts, 351; *Baker et al.* v. *Nachtrieb*, 19 How. 126; *Spiedel* v. *Henrici*, 120 U. S. 377.)

The society was formed by one George Rapp, who, with his son and others, came from the Kingdom of Wurtemburg to the United States in 1803 or 1804, and settled at Harmony, in Butler County, Pennsylvania. In 1814 the society moved to Posey County, Indiana, and later removed to Economy, Pennsylvania, its present abode, in 1825. Its members "were associated and combined by the common belief that the government of the patriarchal age, united to the community of property, adopted in the days of the apostles, would conduce to promote their temporal and eternal happiness." (19 How. 126.)

Their relations, principles of government, personal and property rights were provided for by written contracts executed respectively in 1805, 1821, 1827, 1836, 1847, 1890 and 1892. The present discussion is concerned with the first four.

By article 1 of the contract of 1805 each subscriber to that contract delivered up, renounced and remitted all of his or her property of every kind, "as a free gift or donation, for the benefit and use of the community," and bound themselves, their heirs and descendants, "to make free renunciation thereof, and to leave the same at the disposal of the superintendents of the community," as if the subscribers "never had nor possessed it."

In article 2 they pledged obedience and submission to the society, and promised "to promote the good and interest of the community," and to that they pledged their children and families. But recognizing a possible weakness and inability to "stand to it in the community," they promised (article 3) never to demand any reward for themselves or children for

"labor or services," and declared whatever they should do would be "as a voluntary service for our brethren." In consideration of this renunciation of property and dedication of labor and services, George Rapp and his associates promised to supply the subscribers to the contract with all the necessaries of life, not only in their "healthful days, but when they should become sick or unfit for labor." And if after a "short or long period" a member should die or otherwise depart from the community, "being the father or mother of a family," such family should "not be left widows and orphans but partakers of the same rights and maintenance."

Article 5 was as follows:

"And if the case should happen, as above stated, that one or more of the subscribers, after a short or long period, should break their promise, and could or would not submit to the laws and regulations of the church or community, and for that or any other cause would leave Harmony, George Rapp and his associates promise to refund him or them the value of his or their property, brought in without interest, in one, two or three annual installments, as the sum may be, large or small; and if one or more of them were poor and brought nothing into the community, they shall, provided they depart openly and orderly, receive a donation of money, according to his or their conduct while a member, or as he or their circumstances and necessities may require, which George Rapp and associates shall determine at his or their departure."

The society became the owner of about 7,000 acres of land at Harmony, which on May 6, 1815, was conveyed by Frederick Rapp, as attorney in fact, to Abraham Ziegler for $100,000. That year, or in 1814, the society removed to Indiana. There a second agreement was entered into January 20, 1821. This agreement expressed, as that of 1805, the submission of the subscribers to the society, the dedication of their service and labor, and contained the same promises of support.

The master found that "in 1825 the society removed from Indiana to Beaver County, Pennsylvania, where they purchased and settled upon a tract of land containing about 3,000 acres, now known as 'Economy,' where they have since remained, and which has since become very valuable, and on which they have erected many buildings, including dwellings and factories of various kinds, and made many valuable improvements."

In 1827 another agreement was entered into, the preamble of which was as follows:

"Whereas by the favor of Divine Providence an association or community has been formed by George Rapp and many others upon the bases of Christian fellowship, the principles of which being faithfully derived from the sacred Scriptures, include the government of the patriarchal age, united to the community of property adopted in the days of the apostles, and wherein the single object sought is to approximate, so far as human imperfection will allow, to the fulfilment of the will of God by the exercise of those affections and the practice of those virtues which are essential to the happiness of man in time and throughout eternity.

"And whereas it is necessary to the good order and well being of said associations that the condition of membership should be clearly understood, and that the rights and privileges and duties of every individual therein should be so defined as to prevent mistake or disappointment on the one hand and contention or disagreement on the other."

This agreement was an amplification of that of 1805. Article 5 of the latter became article 6. This agreement was signed by 522 members of the association, and afterwards, and until February 14, 1836, was signed by 144 additional members. In 1832, dissensions having arisen, a large number of the members withdrew under the leadership of one Count De Leon. They received $110,000, and granted a release unto George Rapp and his associates of all of their right and title in any of the property "belonging to the society of George Rapp and his associates."

In 1836 another agreement was entered into revoking and annulling the sixth article of the agreement of 1827—fifth article of the agreement of 1805. The agreement recited the sixth article—

"And whereas the provisions of the said sixth article, though assented to at the time, manifestly depart from the great principle of a community of goods and may tend to foster and perpetuate a feeling of inequality at variance with the true spirit and objects of the association:

"And whereas the principle of restoration of property, besides its pernicious tendency, is one which cannot now be enforced with uniformity and fairness, inasmuch as the members of the association in the year 1816, under a solemn conviction of the truth of what is above recited, did destroy all record and memorial of the respective contributions up to that time;

"And whereas continued happiness and prosperity of the association, a more intimate knowledge of each other, have removed from the minds of all members the least apprehension of injustice and bad faith:

"Now, therefore, be it known by these presents that the undersigned, with a view to carry out fully the great principles of our union, and in consideration of the benefits to be derived therefrom, do hereby solemnly enter into covenants, and agree with each other as follows:

"1st. The said sixth article is entirely annulled and made void, as if it had never existed; all others remain in full force as heretofore.

"2d. All the property of the society, real, personal and mixed, in law or equity, and howsoever contributed or acquired, shall be deemed now and forever joint and indivisible stock. Each individual is to be considered to have finally and irrevocably parted with all his former contributions, whether in land, goods, money or labor; and the same rule shall apply to all future contributions whatever they may be.

"3d. Should any individual withdraw from the society, or depart this life, neither he in the one case nor his representatives in the other shall be entitled to demand an account of said contributions, whether in land, goods, money or labor, or to claim anything from the society as matter of right. But it shall be left altogether to the discretion of the superintendent to decide whether any, and if any what, allowance shall be made to such member or his representatives as a donation."

The agreement was signed by all who were then members, and subsequently by thirty-three others.

Prior to his death, in 1834, Frederick Rapp, a member of the society, had been its business agent, and transacted its external affairs. After his death the members of the society (July 5, 1834) executed a power of attorney to George Rapp, constituting him such general agent, with power to appoint agents and substitutes under him. On the same day he appointed Romulus L. Baker and Jacob Henrici his substitutes. This power of attorney was signed by 402 members, and recited the death of Frederick Rapp, and the consequent necessity for the appointment of a new agent, so that the temporal affairs of the society would continue to be managed in a mode which had proved convenient and satisfactory, constituted George Rapp such agent with power of substitution, invested him with all necessary powers, including the receipt and the execution of conveyances of real and personal property. George Rapp disclaimed any greater interest in the then resources or future earnings of the society than other members.

George Rapp was the founder of the society, and continued to be its head or superintendent, and to rule and govern it until his death in 1847. After his death another agreement was executed (August 12, 1847). It was signed by 280 members. The agreement recited the death of Rapp, and expressed the necessity "to the good order and well being of the association that some plan should be agreed upon to regulate its future affairs, promote its general welfare and preserve and maintain it upon its original basis." And announced to all immediately concerned that the surviving and remaining members of the Harmony Society, each covenanted with all the others thereof, and with those who should thereafter become members, "to solemnly recognize, re-establish and continue the articles of our association (the sixth section excepted), entered into at Economy on the 9th day of March, A. D. 1827."

This agreement created a board of elders of nine members to conduct the internal affairs of the society, and a board of trustees of two members to conduct its external affairs. The trustees disclaimed any greater personal interest in the property of the society than other members.

These agreements, the master found, "are the agreements and documents under which, or some of which, the plaintiffs claim the right to share in the property and assets of the society as heirs of former members." And as to the relations of the plaintiffs to the society the master found as follows:

"1st. That none of the plaintiffs were ever members of the society.

"2d. That all of those members of the society through whom Christian Schwartz claims as their heir, signed the agreements of 1836 and 1874, and continued members until their death.

"3d. That Antony Koterba claims as heir of his father, Joseph Koterba, and his half-brother, Andreas Koterba; that Joseph Koterba joined in the

organization of the society, and also signed the agreement of 1827, and afterwards, in 1827, withdrew from the society; and that Andreas Koterba signed the agreements of 1827, 1836 and 1847, and died a member of the society.

"4th. That the grandparents of David Strohaker, viz., Christian Strohaker and wife, and Matthias Rief and wife, joined the society in 1805, and all remained members until their death—all dying between 1820 and 1825, except Mrs. Rief, who died between 1830 and 1836. That his father, Christopher Strohaker, signed the agreement of 1827, and withdrew from the society in 1827. That his aunt, Catharina Strohaker, signed the agreements of 1827, 1836 and 1847, and continued a member of the society until her death.

"5th. That Lawrence Scheel and Jacob Scheel, ancestors of Allen and G. L. Shale, joined the society in 1805; that Lawrence withdrew in 1824 or 1826; that Jacob Scheel signed the agreement of 1827 and died a member, about 1837.

"6th. That none of the parties through whom the plaintiffs claim contributed any money or property to the society."

He divided the persons from whom the plaintiffs claim as follows:

"First. Those withdrawn from the society before the execution of the agreement of 1836.

"Second. Those dying in the society before that time.

"Third. Those who died members of the society after having joined in the agreements of 1836 and 1847."

Manifestly the plaintiffs cannot have other rights than their ancestors, and the rights of the latter depend upon the agreements they signed. The agreements we have recited. The signers of them certainly strove to express their meaning clearly, and, whenever occasion arose, declared their understanding, aims and purposes, and always substantially in the same way.

The cardinal principle of the society was self-abnegation. It was manifested not only by submission to a religious head, but by a community instead of individual ownership of property, and the dedication of their labor to the society. The possibility of some member or members not being able to "stand to it," to use the expressive phrase of the agreements, was contemplated, and provision was made for that event. But a very significant difference was made between a performance of service and the contribution of property. For the former it was covenanted by the members no reward should be demanded for themselves or their children or those belonging to them. As to the latter, George Rapp and his associates promised to refund the value of the property brought in without interest, in one, two or three annual installments, as the same might be large or small. It was, however, provided, as to those who "were poor and brought nothing to the community," that they should receive, if they departed openly and orderly, "a donation in money, according to his or their conduct while a member, or as his or their circumstances might require," as "George Rapp and his

associates shall determine" (agreement of 1805); as "in the judgment of the superintendents of the association" (agreement of 1827).

Those provisions apply to those who withdrew from the society prior to 1836—the first class into which the master divided the plaintiffs, and need not much comment. None of the persons who so withdrew contributed property to the association. We are not informed by the record whether their conduct when in the society or whether their manner of withdrawing from it, entitled them to the consideration that the articles of agreement permitted as an indulgence to withdrawing members. If they could have exacted anything as a matter of right it would now be presumed that it had been demanded and the demand satisfied.

There was another class, the faithful and abiding members, but even these, the master found, contributed no property, and the decision of their rights becomes as easy as the decision of the right of those who "could not stand to it in the community" and withdrew. They promised, as we have seen, to endeavor by the labor of their hands "to promote the good and interest of the community," and to hold their "children and families to do the same." And for compensation they received instruction in church and school. They received assurance of maintenance "in healthful days" and days which might not be such, and assurance when death should come to them, that their families would be taken care of. It may be presumed that as the members were faithful to their covenants the society was faithful to its covenants, and there were no undischarged obligations or rights for distant relatives of deceased members to assert or claim against the community or its property. This seems to be conceded by counsel for petitioners, and we are brought to the consideration of the third class into which the master divided the persons from whom some of the petitioners claim to derive, those who died members of the society after having joined in the agreements of 1836 and 1847.

Counsel for petitioners say in their brief: "The article of 1836 is the only material article bearing upon the property rights of the plaintiffs, while the articles of 1805, 1821, 1827 and 1847 are material in considering the character of the trust, the purposes and principles of the society."

In other words, as we understand counsel by the propositions they have submitted and the arguments employed to support them, that by the articles executed prior to October 31, 1836, those who joined the society made "a free gift and donation of all their property" to George Rapp and his associates, "*for the use and benefit of the community,*" upon the condition, however, to have the property returned to them if they should withdraw from the society. But that "by the articles of October 31, 1836, all the members of the society agreed with each other to surrender this right of property restitution which each possessed, and to convey the same to all the members in equal shares." In other words, the gifts before 1836 were to the com-

munity; after 1836 to "all the members in equal shares." This difference in result in 1836 and afterwards was effected, it is claimed, by the following provision of the agreement of 1836:

"All the property of the society, real, personal and mixed, in law or equity and howsoever constituted or acquired, shall be deemed, now and forever, joint and indivisible stock. Each individual is to be considered to have finally and irrevocably parted with all his former contributions, whether in lands, goods, money or labor, and the same rule shall apply to all future contributions, whatever they may be."

To the articles of 1836, it is also contended, that the society as such was not a party, but nevertheless the property became impressed with a trust for the use of the society, as such, "by those who then (1836) represented the ownership of this joint and indivisible stock," and as each new member came in "he became an owner of an equal share of the property, subject to the trust." And it is further contended that the members of 1836 and those who came in afterwards became *donors* of the property, and when the society or the trust failed from any cause the "corpus of the trust property" reverted to them "by way of resulting trust, . . . not to the surviving members as donees, or beneficiaries of the trust." In other words, the members became at once *donees* of each other and *donors* to the society, and the descendants of members who had not and might not bring a dollar to the society excluded from any interest in the reversion of its great properties the descendants of those from whom those properties came. And this through the doctrine of resulting trusts, whose fundamental principle is to recognize an equity only in them from whom the consideration has proceeded. And this, too, would result from granting the contentions of petitioners—a society whose chief purpose was to establish community of property would come back to the assertion and fact of individual ownership, and whose hope was self-sacrifice and self-abasement would encourage self-interest and self-assertion. Members could go into the society or go out of it, take nothing to it, serve it ever so little, and become ultimate sharers of its property. They might die in the society, or, having withdrawn, die out of it, and will or convey their titles or rights to others. No such right was ever conceived to exist and no such right was intended to be created. This is demonstrated by the quotations which we have made from the articles of agreement. The permanence of the community was provided for in the articles of 1805; it was continued in those of 1821 and 1827; and on account of the secession of Count De Leon and his followers it was asserted with emphasis in 1836. The article of that year became, and was intended to become, the complete and final consummation of community ownership—did not become and was not intended to become the commencement of individual ownership. That article was but an incident in the life and evolution of the society.

It asserted constancy to the principles of the association, and annulled the sixth article of 1825—fifth article of 1805, because that article manifestly departed "from the great principle of community of goods," and it was said that "with a view to carry out the great principles" of their union "and in consideration of the benefits to be derived therefrom," they entered into this convenant:

"Should any individual withdraw from the society, or depart this life, neither he in the one case nor his representatives in the other shall be entitled to demand an account of said contributions, whether in land, goods, money or labor, or to claim anything from the society as matter of right. But it shall be left altogether to the discretion of the superintendent to decide whether any, and if any what, allowance shall be made to such member or his representatives as a donation."

The purpose was definite and clearly expressed. It was certainly thought to be clear enough by the men who framed it to declare and accomplish the "sacrifice of all narrow and selfish feelings to the true purposes of the association," as the articles fervidly declared. And it was provided that the member who withdrew from the society could make no demand against it "as a matter of right." The member who died left no right to his representatives. It needs no argument to show that as such members had no rights they could transmit none to the petitioners in this case.

No trust having been created by the agreement of 1836 different from that created by the other agreements, there is no necessity to consider the arguments based on the assumption of its invalidity. That agreement was the affirmation and the continuation of the prior agreements, and they were held not to be offensive to the public policy of Pennsylvania, by the Supreme Court of that State in *Schriber* v. *Rapp*, (5 Watts, 151.) The trial court in that case had instructed the jury that "there is nothing in the articles of association (those of 1805, 1821 and 1827) given in evidence that renders the agreement unlawful or void; nothing in them inconsistent with constitutional rights, moral precepts or public policy."

The Supreme Court observed that the point made against the articles as being against public policy was attended with no difficulty, and Chief Justice Gibson said for the court: "An association for the purpose expressed is prohibited neither by statute nor the common law." And it did not occur to this court in *Baker et al.* v. *Nachtrieb*, (19 How. 126,) to treat them as invalid contracts. See also *Goesele* v. *Bimeler et al.*, (14 How. 589;) *Speidel* v. *Henrici*, (120 U. S. 377.)

An analysis of the agreements of 1847, 1890 and 1892 is not necessary. They were made to meet particular exigencies, and expressly affirmed the prior agreements, except the sixth section of that of 1827.

The master, and both the Circuit Court and the Circuit Court of Appeals, found that the society had not been dissolved, either by the consent

of its members or by the abandonment of the purposes for which it was founded. On account of this concurrence the disputed facts involved in that finding, under the rules of this court, and the circumstances of the record, we do not feel disposed to review. There is left, therefore, for consideration only the agreements of 1890 and 1892 and the changes in administration effected by them, and the conveyance of the property of the society to the Union Company. So far as those agreements affect the property rights of petitioners we have expressed an opinion of them, but their effect upon the question of the dissolution of the society, or the effect of the conveyance to the Union Company, we are not called upon to decide. In that question, we have seen, the petitioners have no concern.

Judgment affirmed.

Mr. Justice GRAY and Mr. Justice SHIRAS took no part in the decision.

True copy.

Test:

Clerk Supreme Court, U. S.

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JAN 19 1903
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 38.

CHRISTIAN SCHWARTZ ET AL.

vs.

JOHN S. DUSS ET AL.

MOTION AS TO TAXATION OF COSTS.

And now, to wit, January 19, 1903, comes George Shiras, 3d, of counsel for the plaintiffs in the above-entitled cause, and moves the court that the costs, as taxed by the clerk of this court, for supervision of the record in this cause be restricted to that portion of the record which was embraced in the "agreed record," for the reason that while the entire record from the circuit court of appeals of the United States for the third circuit was deposited with the clerk of this court on the application for writ of certiorari in this cause, only a portion thereof was printed, under an agreement between the counsel for appellants and appellees, constituting

an "agreed record," to which record errors were assigned b
the appellants and argued before and considered by th
court.

All costs upon the agreed record have been paid, and th
clerk has neither printed nor supervised any part of th
lower court record not included in the agreed record.

GEO. SHIRAS, 3D,
S. SCHAYER, JR.,
Counsel for Schwartz et al., Petitioners.

[Endorsed:] File No., 18,024. Supreme Court U. S., O
tober term, 1902. Term No., 38. Christian Schwartz *et*
vs. Jno. S. Duss *et al.* Motion for taxation of costs. Fil
Jan'y 19th, 1903.